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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 31st August 1955

S.R.O. 1906.—Whereas the election of Shri Surendra Nath and Shri Pritam Singh as members of the Legislative Assembly of the State of PEPSU from the Samana double-member constituency has been called in question by an election petition duly presented under Part VI of the Representation of People Act, 1951 (XLIII of 1951), by Shri Dalip Singh son of Shri Dasaundha Singh, resident Sadhpur Viran Tehsil and District Patiala;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, PATIALA

Nawal Kishore—*Chairman.*

Dalip Singh—*Member.*

Krishna Sahai—*Member.*

ELECTION PETITION No. 12 OF 1954

S. Dalip Singh, s/o Dasaundha Singh, aged 27 years, resident Sadhpur Viran, Tehsil and District Patiala.—*Petitioner.*

Versus

Respondents

1. Shri Surendra Nath, s/o L. Nathu Lal, Lahori Gate, Patiala.
2. S. Pritam Singh, s/o S. Sunder Singh, Ghurami Patti, P.O. Samana.
3. Shri Amar Nath, s/o L. Chamba Ram, House No. 842, Ward No. 2. Samana Town.
4. Shri Bhagwan Sarup, s/o Shri Banarsi Dass, Samania Gate, Patiala.
5. Shri Bhajan Lal, s/o Jawahar, Shoe Maker, Samana Mandi.
6. S. Dalip Singh, s/o S. Rullia Singh, Top Khana Road, Patiala.
7. S. Gurdial Singh, s/o Hazura Singh, Nungaran Street, Patiala.
8. S. Joginder Singh, s/o Harnam Singh, Village Tallanian, P.O. Fatehgarh Sahib.

9. Shri Roshan Lal, s/o L. Kundan Lal, House No. 293, Ward No. 3, Samana Town.
10. Shrimati Manmohan Kaur, w/o S. Gian Singh, Patiala.
11. S. Randhir Singh, s/o S. Hazura Singh, Village Ludki Majra, P.O. Kalaran.
12. S. Kehar Singh, s/o Asa Singh, Ragho Majra, Patiala.
13. S. Balbir Singh, s/o S. Gurcharan Singh, Pleader, Bassi.
14. L. Surat Ram, s/o Budh Ram, Sunami Gate, Patiala.
15. S. Udham Singh, s/o S. Kharak Singh, Village Danithal, Tehsil Patiala.
16. S. Naginder Singh, s/o S. Sharest Singh, Dhuri Gate, Sangrur.
17. B. Sat Paul, s/o L. Ram Das, Patiala City.
18. Shri Gopal Chand, s/o L. Dewan Chand, Advocate, Patiala.
19. S. Buta Singh, s/o S. Jassa Singh, Village Ghaunspura, P.O. Kauli—*Respondents.*

ORDER DELIVERED ON 26TH AUGUST 1955

This judgment will dispose of Election Petition No. 12 of 1954. It relates to the double member constituency of Samana and has been presented by Dalip Singh challenging the election of Respondents 1 and 2, namely Shri Surinder Nath Khosla and S. Pritam Singh respectively from that constituency. The petitioner is an elector in the constituency. As many as 19 candidates originally offered themselves for election. The scrutiny of the nomination-papers took place on 13th of January, 1954 when the nomination papers of Respondents No. 1 to 18 were accepted by the Returning Officer while the nomination paper of Respondent No. 19 was rejected on the ground that the thumb impressions of his proposer and the seconder had been attested by a Magistrate who was not the officer specified for the purpose under Rule 2(2) of Act No. 43 of 1951. Polling took place on the 24th of February, 1954 and votes were cast for Respondents Nos. 1 to 9 only as before this date Respondents 10 to 18 had already withdrawn their candidature. The position of these respondents as regards polls was as under:—

(1)	Respondent No. 1	 13,853
(2)	Respondent No. 2	 13,663
(3)	Respondent No. 5	 13,570
(4)	Respondent No. 7	 12,723
(5)	Respondent No. 8	 1,326
(6)	Respondent No. 9	 1,148
(7)	Respondent No. 6	 1,053
(8)	Respondent No. 3	 882
(9)	Respondent No. 4	 612

Respondents 1 and 2 having obtained the largest number of votes were duly elected for the General and the Reserved seats respectively. The petitioner presented this petition on the principal ground that the Returning Officer's interpretation of Rule 2(2) framed under the Act was incorrect as the list of officers specified by the Election Commissioner included Magistrate 1st Class. It was accordingly prayed that since the rejection of the nomination paper was improper, it had materially affected the result of the election which should, in the circumstances be declared to be wholly void under Section 100(1)(c) of the Act.

Respondents 1 and 2 who were the only contesting respondents presented written statements which, so far as the essential points raised in the petition are concerned are more or less identical. It was pleaded that Respondent No. 19 whose nomination paper had been rejected had not been duly proposed and seconded inasmuch as the thumb impressions of the proposer and the seconder had been obtained by fraud. It was also pleaded that the nomination paper of Respondent No. 19 had been rightly rejected, implying that Magistrate 1st Class was not included amongst the persons specified by the Election Commissioner for the purpose of attesting the thumb marks of the proposer and the seconder. It was, however, averred that the rejection of the nomination paper had not materially affected the result of the election. The respondents also pleaded that the petition was not *bonafide* and has been made virtually on behalf of Respondent No. 7, Col. S. Gurdial Singh Dhilon. Respondent No. 19 also filed a written statement in which he supported the allegations contained in the petition but pleaded in addition that Respondent No. 1 was disqualified for being chosen as a member of the State Assembly inasmuch as he was the Managing Director of the New Age Press and had share and interest in a contract for the

supply of goods to the Government of PEPSU. Before framing the issues S. Amar Singh Ambalvi counsel for respondent No. 1 was called upon to give the particulars of the fraud pleaded by him in paragraph 7(e) of the written statement. He stated that what he meant by fraud was that the proposer and the seconder were asked to affix their thumb impressions on the nomination paper of Respondent No. 11 and had affixed them thinking that the nomination paper was that of Respondent No. 11 not knowing that actually the nomination paper on which they affixed their thumb impressions was that of Respondent No. 19. While setting out the various pleas raised in the written statement, we have not referred to those which are mentioned in paragraphs 1, 10 and 11 of the written statements for the simple reason that S. Amar Singh Ambalvi mentioned in his statement dated 19th October, 1954 that he did not press them.

On the above pleedings the following issues were framed:—

(1) Whether respondent No. 19 was duly proposed and seconded and the thumb impressions of the proposer and the seconder on his nomination paper were attested in accordance with law? O.R.

(2) Whether the thumb impressions of the proposer and the seconder had been obtained by fraud and respondent No. 19 was not a party to them? O.R.

(3) In case issue No. 1 is found in favour of the petitioner, was the Returning Officer justified in law in rejecting the nomination paper of Respondent No. 19? O.R.

(4) Whether the rejection of the nomination paper of respondent No. 19 had materially affected the result of election? O.R.

(5) Whether the petition was not *bona fide* and had been made on behalf of respondent No. 7, Col. S. Gurdial Singh Dhillon? O.R.

(6) (a) Whether respondent No. 1 was disqualified for being chosen as a member of the State Assembly because as a Managing Director of the New Age Press, he had a share and interest in a contract for the supply of goods to the Government of PEPSU? O.R. On Respondent No. 19.

(b) Whether Respondent No. 19 is competent to raise an objection to the above effect at the stage of filing of the written statement? O. Respondent No. 19.

(7) *Relief.*—Before dealing with the above issues *seriatim* we may here point out that issue No. 6 was disposed of by us by an order dated 16th of February, 1955, (annexure 1) which shall be read as a part of this judgment. It was held that Respondent No. 19 should not be allowed to circumvent the election law by raising points, which had not been mentioned by the petitioner, after the expiry of limitation and without depositing security which he could do only if he had filed an election petition.

Issue No. 1.—The question calling for determination in connection with this issue is whether it is established on the record that Respondent No. 19 had been duly proposed and seconded. It is a question of fact and on the evidence on the record we are satisfied that the burden of proving it has been duly discharged. There is, in the first instance, the statement of P.W. 5 S. Buta Singh according to which Hazara Singh the proposer and Mohinder Singh the seconder who were both illiterate affixed their thumb marks on the nomination paper in the presence of P.W. 3 Shri Shamshad Ali Khan Magistrate Ist Class. P.W. 3 Shri Shamshad Ali Khan has supported the above statement. He recognised Respondent No. 19 sitting in court who had brought both the proposer and the seconder to him and produced the nomination paper Ex. PW 2/1A before him for attestation of their thumb impressions. He stated that he had satisfied himself about their identity before attesting their thumb marks. He had also ascertained from Hazara Singh that he was the proposer and from Mohinder Singh that he was the seconder of the nomination of Respondent No. 19 before attesting the thumb-impressions. He was subjected to lengthy cross-examination but nothing useful has been elicited from him. The respondent has produced Mohinder Singh as R.W. 3 on this point but after perusing his statement we are unable to hold that he has in any way weakened the statements referred to above. R.W. 3 did not at all depose that he had not thumb impressed the nomination paper of Respondent No. 19. He only stated that after the nomination paper of Respondent No. 19 had been rejected, Respondent No. 11 met him and while conveying the information regarding the rejection of the nomination paper of Respondent No. 19, stated that it bore his thumb impression. Thereupon he expressed surprise and told him that this could not be so as he had thumb impressed the nomination paper of Respondent No. 11 and not that of

Respondent No. 19. The statement of this witness may have a bearing on the question of fraud having been perpetrated by Respondent No. 19 upon him, but that is the subject matter of issue No. 2 with which we will deal at the proper time and has nothing to do with the factum of his thumb impression having been affixed by him on the nomination paper of Respondent No. 19. We have already referred in detail to the statement of P.W. 3 Shri Shamshad Ali Khan on this point. He has stated, as already mentioned above, that he had ascertained both from the proposer and the seconder whether they were affixing their thumb marks on the nomination paper of Respondent No. 19 before attesting them. The attestation of a thumb impression by a Magistrate apart from other things is an official act which shall be deemed to have been done properly and in the normal course of things.

In the circumstances we are quite clear in our mind that the petitioner has succeeded in proving that the nomination paper of Respondent No. 19 had been duly proposed and seconded.

The other question arising in connection with issue No. 1 is whether the nomination paper had been attested in accordance with law. The precise point involved in this part of the issue is whether a Magistrate Ist Class is one of the persons specified by the Election Commission, India, for the purpose of attesting the thumb marks. The petitioner has placed upon the record Ex. P1. and Ex. P1. (b) purporting to be respectively a letter from the Election Commission India to all the Chief Electoral Officers and directions issued by the Election Commission under Rule 2(2) of the rules framed under the Act. These directions specified the following officers in whose presence the mark of an illiterate person may be placed on the nomination paper:—

(i) Any Polling Officer within a polling station; and

(ii) Any officer authorised by or under Rule 40 of the Act to attest the signature of an elector of the election.

A reference to rule 40 shows that any Magistrate, to whom the elector is personally known or to whose satisfaction he is identified, is competent to do so. The directions Ex. P1(b) were sent to all Chief Electoral Officers by the Election Commission, India, on 20th of September, 1951 as is clear from Ex. P1, the forwarding letter. Thereafter, it appears that typed copies of these directions were forwarded to the various Returning Officers all over PEPSU for their information and compliance. A typing mistake appears to have been committed in the office of the Chief Electoral Officer, Patiala, inasmuch as in the copies which were turned out by the typist, clause (ii) which refers to the Officer authorised by Rule 40 being competent to attest the signature was omitted. This is obvious from a perusal of Ex. R1. P.W. 4 Behari Lal, Head-Assistant to the Chief Electoral Officer, Patiala, has stated that clause (ii) was omitted from the copies of the directions possibly due to a typing mistake. He has stated clearly that the directions referred to above were the only directions issued by the Election Commission of India and that no other directions on the point were issued by them subsequently. While making the above statement he however deposed that these directions were received in the office of the "Election Commissioner", Patiala and that the last line of paragraph (1) was "redrafted" and the crucial words contained in clause (ii) were omitted.

The learned counsel for the respondents has built a huge argument on the basis of this portion of P.W. 4's statement and the typing mistake mentioned above and urged as follows:—

(a) According to article 324 of the Constitution of India, Election Commission consisted of Chief Election Commissioner and Election Commissioners. Since there was an Election Commissioner in Patiala, he enjoyed the same status as the Chief Election Commissioner, India and was accordingly authorised to issue fresh directions or modify or change or re-draft the directions received from the Chief Election Commissioner, India.

(b) The words 'specified' in rule 2(2) had not been defined anywhere in the act and according to the plain dictionary meaning it implied 'promulgation' or 'circulation'. It was accordingly argued that if the original order issued by the Chief Election Commissioner remained confined to the office of the Election Commissioner, Patiala, it could not be said to have been promulgated or circulated and that, therefore, the only order which had any force or validity was the one which had been issued by the Election Commissioner, Patiala, and had accordingly been duly circulated or promulgated amongst the various Returning Officers of the State.

The above contention of the learned counsel would not have been possible if the typing mistake had not been committed and P.W. 4 Behari Lal had not imported into his statement the terms 'Election Commissioner' and 're-drafted'. It is contended that the order sent by what the learned counsel chose to describe Election Commissioner, Patiala to the various Returning Officers was the final order and since it did not specify a Magistrate in connection with the attestation of the thumb marks, it must be held that the order passed by the Returning Officer rejecting the nomination paper was proper. The learned counsel in support of his argument referred to a number of authorities in order to show that before a subject is penalised under a particular order, it must have been promulgated or must be one which he could know by reasonable diligence. The order, it was contended, would come into operation only when it became known. We do not feel the necessity of dealing with these authorities as we are definitely of the view that the whole contention proceeds upon a complete misapprehension due to use of the unfortunate terms "Election Commissioner", and "re-drafted" by P.W 4. The statement has been accorded more sanctity than it deserves. It was nothing except the use of loose phraseology by the witness and, in the very nature of things, should be completely ignored instead of being made a subject of an elaborate argument. it goes without saying that whatever may be the implication of Article 324 of the Constitution, as a matter of fact in Patiala or else where there is no such person as Election Commissioner in a State and that the officers associated with or incharge of the eletions are known as Chief Electoral Officers and further that it is not open to them to change or modify or re-draft the instructions received by them from the Chief Election Commissioner, India. This seems to be absolutely clear from a number of considerations which have been placed before us by the petitioner's learned counsel. In the first instance the Election Commision or Chief Election Commissioner is appointed by the President; whereas the officer operating in the PEPSU was appointed by the State and not by the President. Secondly the learned counsel should have seen that letter Ex. P1 and the direction Ex. P1(b) were both addressed to the Chief Electoral Officer of the State. The directions themselves are dated 20th of September, 1951; but they were communicated to the Returning Officers on the 15th of October, 1951 by the Chief Electoral Officer. Reference to State Gazette dated 8th of October, 1950 also shows the appointment of Chief Electoral Officer by the PEPSU Government and not that of a Commissioner. Similarly the PEPSU State Gazette dated 2nd September, 1951, again shows that it was the tenure of the Chief Electoral Officer and not that of the Election Commissioner which was extended. In the circumstances we have no hesitation in rejecting the contention of the learned counsel for the respondents as not worthy of notice.

The next question which calles for some comment relates to the contention in connection with the publication, promulgation and circulation of the directions issued by the Election Commission, India, Reference to Section 2(3) of Act No 43 of 1951 and rule 2(5) of the rules however appears to us to clinch the matter. According to both these provisions a notification, order, declaration, notice or list issued or made by any authority shall be published in the official Gazette only if it is required by the Act or the Rules to be published. Now all that is stated in rule 2(2) is that the Election Commission may specify the officer in whose presence the mark is to be placed. The learned counsel has not been able to show how what is specified, is in any manner required by the Act or of the Rules to be published. Reference in this connection was made by the learned counsel for the petitioner to 7, E.L.R. 135(143) where it was held that all that was required to be published was the list but not the restrictions referred to in the proviso to Rule 5 of the rules. This was an authority in connection with certain points which arise under Rule 5 of the Rules and serves to show what seems to us to be rather plain on a bare perusal of Section 2(3) and Rule 2(5) that unless it is a requirement either of the Act or of the rules, publication is not at all necessary. It is not denied that Rule 2 and the other rules under the Act were duly published in the Gazette. Accordingly the law on the point cannot be said to have been in doubt or not known to the subject. Now since the directions [Ex. P. 1(b)] were the only directions received in office of the Chief Electoral Officer and the Magistrate 1st Class was amongst the persons specified, the attestation made by him was in order. Shri Shamshad Ali Khan has deposed that he was aware of the directions and had attested the thumb marks, knowing that he was authorised to do so. We accordingly hold that the Returning Officer committed a mistake in rejecting the nomination paper of Respondent No. 19 S. Buta Singh on the above ground and the rejection was improper.

Issue No. 2.—This issue relates to the question whether the thumb impressions were obtained by fraud and Respondent No. 19 Buta Singh was not a party to it. This issue need not detain us long as in our view the fraud, particulars of

which have been stated by the learned counsel for the respondents in his statement dated 19th of October, 1954 has not been established on the record. This matter was put to P.W. 5 Buta Singh in his cross-examination and he denied that the proposer and the seconder affixed their thumb marks on the nomination paper originally meant for Respondent No. 11 Randhir Singh. We have already considered the statements of Hazara Singh and Mohinder Singh and also the statement of the Magistrate Shri Shamshad Ali and we are satisfied that no fraud was practised by Buta Singh Respondent on the proposer and seconder of his nomination paper. It is enough to point out that Mohinder Singh has stated that Respondent No. 11 had met him a few days before the filing of the nomination paper and had told him that his nomination paper would be brought by Respondent No. 19 and that he should affix his thumb impression upon it. This is, however, denied by R.W. 4 Respondent No. 11 himself who stated that he had not asked Mohinder Singh or Hazara Singh to affix their thumb impressions on his nomination paper. Respondent No. 11 has stated that he had filled up his nomination paper himself and had asked for the help of Respondent No. 19 in having at hand a proposer and a seconder in case of need. As stated above, he had not asked the proposer and the seconder of the nomination paper of Respondent No. 19 to affix their thumb impressions on his nomination paper. We are wholly unable to see in the first instance why Respondent No. 11 should have felt the necessity of asking Respondent No. 19, a rival candidate to have his nomination paper attested by his witnesses. He does not state that he had felt any difficulty in finding a proposer or seconder. In any case it is not clear why Buta Singh Respondent No. 19 should have his nomination paper attested by playing fraud upon his proposer and seconder one of whom was very closely related to him. The plea of the respondents which is the basis of issue No. 2 appears to us to be an after-thought and in view of what has been stated above, we find that the burden of issue No. 2 which was on the respondents has not been discharged.

Issue No. 3.—While discussing issue No. 1, this issue has already been discussed and disposed of.

Issue No. 4.—In view of our finding that the nomination paper of Respondent No. 19 had been improperly rejected by the Returning Officer this issue is now the most important issue in the case. The question for determination is whether the improper rejection of the nomination paper has materially affected the result of the election. There are a large number of authorities on the subject of various Tribunals in the country and we feel that the law is by now well settled. Since, however, a very lengthy argument has been addressed at the bar on either side, we feel called upon to deal with it at some length. The entire case law which has accumulated turns upon the interpretation of Section 100(1)(c) of Act 43 of 1951 which reads as follows:—

> "100. Grounds for declaring election to be void (1). If the Tribunal is of opinion.....
>
> (c) that the result of the election has been materially affected by the improper acceptance or rejection of any nomination,
>
> the Tribunal shall declare the election to be wholly void."

It is conceded by the learned counsel for the petitioner that according to the plain meaning of the section the burden is on the petitioner to show that the result of the election has been materially affected both where the nomination paper has been improperly accepted or improperly rejected. It is however urged that in the case of improper rejection a strong presumption arises in favour of the result of the election having been materially affected on account of the mere fact that the electorate had been deprived of the right of casting their votes for a duly qualified candidate. It is accordingly contended that so far as the petitioner is concerned the burden is discharged as soon as it is shown that the rejection of the nomination paper has been improperly made and thereafter the burden shifts on the respondents to show the negative, *viz.* that the result of the election has not been materially affected. The contention of the learned counsel is that to this extent the decided cases take a unanimous view. There is, however, stated to be a sharp conflict on the question whether the presumption is rebuttable or irrebuttable. The learned counsel conceded frankly that the presumption could not be said to be irrebuttable and that in theory and as a matter of law it was and must be held to be rebuttable. It was, however, submitted that some Tribunals had held that it was difficult to conceive of any evidence which could rebut this presumption as the evidence could only be in the nature of speculation or guess work, while other Tribunals had held that it would depend upon the facts of each case and the conclusion should be arrived at after judging the evidence whether the presumption had or had not been rebutted.

The learned counsel argued with great emphasis that since it was impossible for the human mind to say what the result of the election would have been if a different set of circumstances had been in existence, the evidence in rebuttal could only be purely conjectural. To repeat, the contention in a nut-shell was that the presumption arising in favour of the petitioner on account of a qualified candidate having been kept out of arena and the electorate having been deprived of the right of exercising their vote was very strong, and that it could only be rebutted by evidence which must be equally strong, cogent and conclusive. It was contended that in order that it may be possible for a court to hold that the presumption had been rebutted, it must find that if the rejected candidate had fought the election, he could not possibly reduce the votes secured by the winning candidates to such an extent that any one of the candidate would have lost. Since no one could predicate with any degree of certainty or with what might be described as mathemetical accuracy, the evidence adduced in rebuttal could not be given the status of cogent and conclusive evidence. The petitioner's learned counsel in support of his contentions relied upon the long chain of authorities reported in the Election Law Reports, all holding that a presumption arose by the very nature of things. He also drew our attention to the Nasik case reported in 9 E.L.R. 36 which, he submitted, was the only case in which it was held that no such presumption arose. On the question whether the presumption was rebuttable he referred to the cases decided by the various Tribunals of Rajasthan and submitted that it should be held that the view taken there was not correct.

The learned counsel for the respondents relied in the first instance upon 9 E.L.R. 231, a judgment of the Supreme Court where it was held that the election law must be construed strictly. He accordingly contended that since according to the plain language of Section 100(1) (c) the burden was on the petitioner, it could not be said to have been discharged unless conclusive evidence was led by him. He further contended that it was not a correct view that because a candidate had not been able to fight the election on account of the improper rejection of his nomination paper, a presumption arose in favour of the petitioner. The learned counsel then relied on 9 E.L.R. 36 and also upon observations made in 10 E.L.R. 30, another Supreme Court Judgment and a few other authorities with which we shall deal at the proper place. The learned counsel vehemently contended that it was not correct to say that any evidence which might be led even if a presumption arose would necessarily be of a conjectural nature. He argued that each case depended on its own facts and there was no reason why they should not be judged in a proper perspective. In the present case, he contended, there had been two elections already and we had the entire picture before us. The elections had been fought on a party basis and if a person had not been able to obtain a ticket or was not an individual of status or eminence or of good credentials he could not turn the scales in his favour. The last contention was that it was a double member constituency and unless Respondent No. 19 had alignment with a scheduled caste candidate, he had no chance of success whatsoever. The learned counsel then took us into the evidence and discussed it at length.

We have given our most anxious thought to the pros and cons of the case as presented by the learned counsel on either side and weighed the respective contentions, for the moment wholly untrammelled by the weight of authority. The petitioner's case, is, as already stated above, that because of the rejection of the nomination paper, a duly qualified candidate had been denied the right of seeking representation at the hands of the electors in the constituency. The entire electorate had been denied the right of exercising their vote in his favour. Accordingly it is argued that the burden of proving whether the result of the election has been materially affected, though initially upon the petitioner, shifted on account of the presumption arising in his favour in the above circumstances and thereafter, it was for the respondent to prove the negative. The learned counsel for the respondents on the other hand argues that the above circumstances do not give rise to any presumption at all and that the burden was upon the petitioner who should fail in case no evidence was led by him. We are, however, unable to appreciate this contention. The electorate in a constituency has the right to send a person to the Assembly who may be said to be their true representative. Where a number of persons offer themselves as candidates and they are otherwise qualified to stand, and one of them is kept out for one reason or the other, can the person elected in the circumstances be said to be a true representative of the electorate and is the electorate not justified in complaining that they have been deprived of their right. If it can be said, in the circumstances, that a true representative has not been elected, the conclusion is irresistable that the result of the election has been materially affected. This particular

circumstance is by itself sufficient to raise a presumption in favour of the result having been materially affected and then it is the respondent who should fall if he is unable to establish the negative by conclusive and cogent evidence. This is how the picture presents itself to our mind irrespective of the weight of authority which happens to be overwhelmingly in favour of this view. In almost every case of this nature which has come up before the various Tribunals the argument invariably has been that the plain language of Section 100(1)(c) had placed the burden of proof on the petitioner and that no presumption arose in the petitioner's favour. A perusal of the case law, however, discloses that this contention has not succeeded in any case. Reliance is placed on 9 E.L.R. 36 with which we will deal elsewhere at length. There are reported judgments of the various Tribunals at Delhi, Sikandrabad, Calcutta, Lucknow, Saurashtra, Patiala and various places in Rajasthan, where in spite of extensive argument on behalf of the respondent, it was held that on account of the circumstances mentioned above in detail, a strong presumption arose in favour of the fact that the result of the election has been materially affected. We find after a perusal of the various authorities to which we will presently refer that a uniform view has prevailed throughout. The conflict in these authorities as we have said above, appears to exist only on the question whether this presumption is rebuttable or irrebuttable and we will briefly discuss this question later though the learned counsel for the petitioner has conceded that the presumption is rebuttable. What is the nature of the evidence which would be necessary in order to rebut the presumption is a totally different matter and will be gone into later. In a case reported in 2 E.L.R. 12, which is a judgment of the Election Tribunal at Delhi Mr. (now Mr. Justice) Dulat has discussed this question at length. It was held that where a nomination paper had been improperly rejected it followed as a necessary inference that the result of the election had been materially affected because the irregularity was of so grave a character that no other conclusion was possible. It was held that the inference was so strong that in none of the cases brought to light had it ever been ignored. The Tribunal did not specifically refer to various authorities on the point but had in view 35 decisions governing the matter before the Representation of People Act, 1951 was enacted and also other decisions which had since come into existence under the new Act and it was held that there was a continuous and unbroken chain of judicial precedents to support the contention of the petitioner. We may point out that there is no difference between the provisions of Act 43 of 51 on this point and the law which preceded it. Hence all judicial precedents have equal bearing on this point. The list of authorities is long but reference may be made to a few, namely 2 E.L.R., 1,8,20,88,121,136,245,266,414, 3 E.L.R. 81,305, 4 E.L.R. 301,441, 5 E.L.R. 81, 6 E.L.R. 368, 7 E.L.R. 338, 428. 9 E.L.R. 385 and 10 E.L.R. 1; Judgments of the Rajasthan Tribunals which fall in line with the above are 3 E.L.R. 147,375, 4 E.L.R. 200, 7 E.L.R. 407, 8 E.L.R. 28, 9 E.L.R. 21. After a careful consideration of all these authorities, we are of the view that they support the contention of the petitioner that a presumption arises when a nomination has been improperly rejected and the burden of proof shifts on the respondent to show the negative. The learned counsel for the respondents has placed his reliance upon two Supreme Court Judgments reported as 9 E.L.R. 231 and 10 E.L.R. 30 and also on a judgment of the Nasik Tribunal reported as 9 E.L.R. 36 and all the judgments of Rajasthan Tribunals referred to above in support of the proposition that the presumption did not arise and burden lay on the petitioner and did not shift. We are unable to agree with this proposition. 9 E.L.R. 231 was not a case of improper rejection of a nomination paper and was cited in support of two propositions enunciated in the judgment namely that the statutory requirement of the election law must be strictly observed and that an election contest was not an action at law or a suit in equity but was purely a statutory proceeding unknown to common law and the court possessed no common law power, and secondly that it was a sound principle of natural justice that the success of a candidate who had won at the election should not be lightly interfered with. No one can possibly object to the correctness of any of these propositions and we respectfully agree with the view propounded in the judgment. In this very judgment there is however an observation to the effect that though the election of a successful candidate was not to be lightly interfered with, one of the essentials of the election law was also to safeguard the purity of the election process and to see that people did not get elected by flagrant breaches of that law or by corrupt practices. In the present case this observation has apt application as although we are ourselves mindful of the fact that the election of the successful candidate should not be lightly interfered with it must also be seen that no flagrant breach of the election law has taken place. Accordingly this judgment, if at all, goes in favour of the petitioner inasmuch as it has been shown that on account of the breach of the law relating to attestation of signatures of the proposer and the seconder on the nomination paper of respondent No. 19, the provisions of the lection law had

not been safeguarded. So far as the strict observance of the statutory requirements of the election law is concerned it is common ground between the parties that the burden initially lies upon the petitioner and it is a different question altogether, apart from the language of the Statute whether that burden has shifted on account of the presumption. This authority has nothing to say against it. 10 E.L.R. 30, another judgment of the Supreme Court was a case of improper acceptance of a nomination paper and not of an improper rejection. The learned counsel has relied upon the observation to the effect that under Section 100(1)(c) the volume of opinion preponderated in favour of the view that the burden lay upon the objector. The language of the above section itself, as observed in this very judgment also clearly places the burden upon the objector. The learned counsel argues that since Section 100(1)(c) covered cases of both improper acceptance and improper rejection, these observations should be held to cover equally the case of an improper rejection of a nomination paper. It appears to us on a careful perusal of this judgment that the Supreme Court did not refer anywhere to a case of improper rejection. On the contrary even where it was possible for such a case to be included within the purview of the judgment, the reference is only to a case of improper acceptance. On page 37 of the report it is stated that the learned counsel for the Respondents conceded that the burden of proving that the improper acceptance of a nomination paper had materially affected the result of the election lay upon the petitioner. In the preceding paragraph there is a reference to the case of Jagdish Singh. Vs. Rudar Babu Lal etc. (Gazette of India Extraordinary of October, 1953) where the Tribunal had distinguished between an improper rejection and an improper acceptance of a nomination paper, observing that while in the former case there was a presumption that the election had been materially affected, in the latter case the petitioner must prove it by affirmative evidence. It is obvious that the Supreme Court had before them a clear case in which a distinction had been drawn between two sets of cases and yet since the Judges were dealing with only a case of improper acceptance, they made no observations one way or the other regarding a case of improper rejection. The nature of the evidence produced in order to discharge the burden is dealt with later in this judgment and there again it is observed that the petitioner in *such a case* is confronted with a difficult situation. To our mind it is quite clear that this judgment did not in any manner whatsoever deal with a case of improper rejection and accordingly the observations made in the judgment must be strictly confined to cases of improper acceptance.

9 E.L.R. 36, a Judgment of the Election Tribunal at Nasik is the only case which seems to support the view put forward by the learned counsel for the respondents. In this case the nomination paper of respondent No. 3 had been improperly rejected and therefore the question arose whether the result of the election had been materially affected. A significant circumstance in the case was that respondent No. 3 had at no time made a grievance against the improper rejection of his nomination, and in spite of a notice having been served upon him had failed to appear before the Tribunal. Though it was not considered to be a decisive circumstance, considerable importance was attached to it for the purpose of deciding the above point. Another important feature of the judgment relates to the stress which was laid on the point that the common law of England was no guide in construing the provisions of the Indian Statute. This aspect arose out of the contentions of the learned counsel for the petitioner and does not arise here. Another contention put forward by the learned counsel for the petitioner was that since it was practically impossible for the petitioner to prove that the result of the election had been materially affected. The Tribunal should as a matter of course declare the election void as English Courts do in similar circumstances. This contention was stoutly rejected by the Tribunal on the simple ground that the Legislative had not so enacted. It cannot be gainsaid that this is correct so far as it goes. It could not possibly be held that on account of the difficulty with which the petitioner was faced the burden shifted on the respondents and the result of the election should be presumed to have been materially affected. The exact point arising before us, on the basis of the large mass of authority was not put forward by the counsel for the petitioner in the Nasik case and therefore neither those numerous authorities came in for a consideration nor was the question whether a presumption arose by the very nature of the circumstances directly considered or decided.

The learned counsel for the respondents has relied upon the following observations in the judgment:—

(a) Section 100(1)(c) is not founded on any rule of English Law and, therefore, reference to Common-Law of England would be irrelevent;

(b) The words 'in the positive form' as used by the Legislature in Section 100(1)(c) are such that it is almost impossible without doing serious violence to the language to convert them into negative provision such as has existed in England which only would justify the onus being thrown on the respondent to show that non-compliance with the law had not affected the result of the election;

(c) The person whose nomination paper had been rejected had not joined the petitioner in filing the election petition, nor had he appeared to give his support or oppose the petition. In such a case no inference could be raised that the election had been materially affected.

So far as the first point is concerned there seems to be no doubt as has been observed in 10 N.L.R. 30 that the Common Law of England has no application to the Election Law of India and further that there is an inherent difference between the language of Section 13 of the Ballot Act and Section 100(1)(c). In English Law the election cannot be declared invalid on account of non-compliance with the rules etc., if it appeared that the non-compliance did not affect the result of the election. Obviously the burden of proving the negative would be on the respondent but so far as Section 100(1)(c) is concerned it has no bearing upon it in as much as Section 13 of the Ballot Act does not refer to any improper acceptance or rejection of a nomination paper. Ultimately however there seems to be no difference between the English Law and the Indian Statute on this point according to the view which has prevailed with us in as much as if the burden shifts on the respondent on account of the presumption the responsibility of providing the negative proposition would be as much upon him under the Indian Law as under the English Law. It is for this reason that the observations in the English authorities regarding the weight to be attached to the evidence produced by the respondent are of considerable importance and an almost identical view has prevailed in all the cases decided by the Tribunals in India. It is accordingly futile to urge that no reference to the English authorities should be made at all. So far as the second observation is concerned it is a reproduction from 3 E.L.R. 248, referred to in 9 E.L.R. 36 but it has been held by us that according to the plain language of Section 100(1)(c) the burden is initially upon the petitioner. In holding that it had shifted on the respondents we have proceeded only upon the strong presumption without doing any violence to the language of the section. It is, therefore, incorrect to say that in coming to that conclusion the words of the section have been converted into a negative provision. Not a single judment has been placed before us where the plain language of the Section has been considered and the words in the positive form have been converted into a negative provision. In every case that has been cited, the burden has been placed on the respondent because of the presumption and on no other consideration. So far as the third observation is concerned i.e. the non-joinder of the person whose nomination paper had been rejected, with the petitioner, we are respectfully of the view that this is a consideration which may arise, but should not be given such great weight as has been attached by the Tribunal. The proceedings under the Act are of a representative character and not only the candidate but also the electors in the constituency are all affected by the result of the election. Accordingly every one of them has a right to present an election petition and the elector is as much interested in filing the election petition as the candidate himself whose nomination paper has been wrongly rejected. The elector practically steps into the shoes of the candidate and it is open to him to raise all the pleas which might have been put forward by the candidate himself. It does not matter if he takes no part in the proceedings or does not protest by filing an election petition or otherwise. In any case this aspect has no bearing on the petition before us. In this case Respondent No. 19 Buta Singh has not only put forward a written statement supporting the petitioner but has also appeared as P.W. 5. Before parting with the Nasik Case we would like to refer to certain observations which to all intents and purposes seem to us to run counter to the contentions of the respondents or for that matter to the view which ultimately prevailed with the Tribunal. It was observed in the judgment that in cases where the electors had no opportunity to vote at all, it may be permissible to the Tribunal to infer that the result of the election had been materially affected. This observation was made with reference to a case previously decided by the Tribunal at Nasik, where there was no election at all. The nominations of all the candidates except one had been rejected with the consequence that the remaining candidate was declared elected. The Tribunal took the view that having regard to the facts of this case it was reasonable to hold that the electors had no opportunity of electing a candidate which the majority might prefer and that in the absence of such an opportunity, the result of the election had been materially affected. There seems to be no particular reason why this view should be confined only to such cases

where there had been no election or polling at all and not to a case, such as the one before us, where electors had no opportunity of casting their votes in favour of one of the candidates whose nomination paper had been rejected. In such a case also since there had been no polling at all in respect of this candidate, the electors had been deprived of the right to vote and the result of the election should be held to have been materially affected according to the observation made by the Tribunal itself. There is a further observation in the judgment which, with all respect, we are unable to follow. It is stated that no such "presumption arises necessarily when an election in fact takes place". It may be that in the given circumstances, such a "presumption may arise, but it would all depend on what the facts are in each case". To us it appears that the Tribunal found it difficult to escape from the view that a presumption did arise, although it was modified by the observation that it would depend upon the facts of each case. Truly speaking each case has only one fact in common and that is that the nomination paper of a duly qualified candidate has been improperly rejected. No other facts to our mind require consideration.

The learned counsel for the respondents thereafter referred to the judgments of the Tribunals in Rajasthan but in all these judgments a presumption has been raised and the burden shifted to the respondent. Therefore, we are unable to see how they support the contention of the respondents learned counsel.

The above discussion disposes of all the contentions put forward on behalf of the respondents except one and that is whether the presumption is rebuttable and if so is it imperative that the Tribunal should weigh the evidence before holding whether the result of the election had not been materially affected. After perusing the authorities cited we find that the weight is in favour of the view that the presumption was rebuttable though it required very strong, cogent and conclusive evidence to rebut the presumption. In 3 E.L.R. 147, a judgment from Bikaner, after agreeing with the view taken in other authorities regarding the presumption held that it was not irrebuttable, though it required very strong and convincing evidence to rebut it. Similar view prevailed in other cases, for instance, 3 E.L.R. 375, 4 E.L.R. 200, 6 E.L.R. 224, 8 E.L.R. 28 and 7 E.L.R. 407. Now so far as the nature of the evidence is concerned the view taken both in the English and the Indian decisions is identical. In this connection observations of Grove J in the Hackney case are reproduced below:—

> "I cannot see how the Tribunal can by any possibility say what would or might have taken place under different circumstances. It seems to me to be a problem which the human mind is not able to solve *i.e.* if things have been different at certain period what would have been the result of the concatenation of events upon the supposed chain of circumstances I am unable at all events to express any opinion upon what would have been the result. That is to say who would have been elected provided certain matters had been complied with here which were not complied with at that time."

Observations almost to the same effect occur in 1 E.L.R. 13(19) in the words of Chhagla, C. J., cited below:—

> "I would certainly confess that I find it difficult to visualise how any Tribunal can possibly come to the conclusion that when a candidate's nomination paper has been improperly rejected it does not materially affect the result of the election. How the electors would have voted and what the result of the election would have been if the petitioner had been a candidate would be entirely a matter of speculation and no Tribunal, however, well versed in Election matters, could ever decide whether the result of the election would not have been different if the petitioner had stood as a candidate."

These observations were no doubt obiter, but appear to us to be of great importance on the question before us and we are not prepared to pass by them lightly and respectfully agree with them. Mr. (now Mr. Justice) Dulat also came to the same conclusion when he observed in 2 E.L.R. 12(15) that it was sufficient to pose such a question, to be at once aware that it took the Tribunal in the realm of pure speculation. He went further and observed that the Tribunal could not conceive of any legal evidence which could assist them in finding what would have happened if the candidate's nomination papers had not been rejected. He again said "we cannot imagine that the Legislature intended that we should resort to conjecture and frame our opinion without the foundation of any legal evidence for the verdict of the electorate. In 4 E.L.R. 441 a judgment by Mr. Sarwate before the Election Tribunal, Patiala observations of Grove J in the Hackney case and Mr. (now Mr. Justice) Dulat's remarks in 2 E.L.R. 12 have been cited at length to show the enormous difficulty of proof of circumstances which would be

acceptable to rebut the presumption, the underlying idea obviously being that any evidence produced for this purpose would take the Tribunal in the realm of conjectures. In 10 E.L.R. 30(39) while dealing with the nature of the evidence to be produced by the petitioner in a case of improper acceptance where the burden lay upon him, it was observed by the Supreme Court that it was impossible to accept the *ipse dixit* of witnesses coming from one side or the other to say that all or some of the votes would have gone to the one or the other on some supposed or imaginary grounds.

Now in order that the election may be upheld there must be conclusive evidence on behalf of the respondents that if respondent No. 19 Buta Singh had contested, he could not possibly have reduced the votes of respondents 1 and 2 to such an extent that they would have lost. Such evidence is in our opinion, extremely difficult, we might even go to the extent of saying, impossible to produce unless one relies upon conjectures and guesses. The learned counsel for the petitioner vehemently urged that since any evidence produced by the respondents would at best be conjectural the Tribunal should without looking at the evidence hold that the result of the election had been materially affected simply on the ground that the electorate had been deprived of the right to exercise the vote. The contention of the learned counsel seems to us to go a little too far as it appears to us that in order to reach a satisfactory conclusion, we must have a full picture of the case before us which however would not be possible unless we look into the evidence produced on the record. It is a different matter altogether that any effort on the part of the witnesses to state with precision or accuracy what might have happened at the given juncture of time if a set of circumstances had been in existence would normally be sheer waste of time. Still it does not mean that the Tribunal should not in all cases advert to this evidence at all. The learned counsel for the petitioner cited several authorities in order to show that a conclusion had been arrived at without adverting to the evidence. We have perused these authorities and these are no other than those which have already been cited and we find that in almost all of them evidence had been looked at, although it had not been discussed and commented upon. The view in these cases that no legal evidence had been produced could not be possible unless that evidence had been looked into. We have accordingly perused the evidence produced by the respondents and also considered the three fold position taken up by their learned counsel, namely that since two elections had taken place, the entire picture was there or that since it was a contest between parties, a candidate without a ticket or without status had no chance or that in a double member constituency the candidate whose paper had been rejected should have alignment with Scheduled Caste candidate. All these points have been considered in the light of the evidence produced but we are unable to hold that this evidence is of such a cogent and conclusive character that the presumption should be held to have been rebutted by it. Witnesses have appeared who have no doubt stated that respondent No. 19 had no influence whatsoever in the constituency for various reasons but these are again *ipse dixits* and no satisfactory conclusion can be based upon them.

The above disposes of issue No. 4.

So far as *issue No.* 5 is concerned the burden of proving that the petition was not a *bona fide* one and had been made on behalf of Respondent No. 7 lay upon the respondents but neither any evidence has been led nor arguments addressed on behalf of the respondents. The issue is accordingly decided against them.

Issue No. 6 has already been disposed of in favour of the respondents by order dated 16th of February 1955.

Before concluding, we might as well deal with an argument which was addressed on behalf of respondent No. 2. It was contended that since there had been a non-observance of the rules on the part of the Returning Officer when he rejected the nomination paper of Respondent No. 19, the case fell within the purview of Section 100(2)(c) and accordingly the election of Respondent No. 1 alone could be declared to be void and not that of Respondent No. 2 as well. This aspect of the case was not put forward by respondent No. 2 in the written statement filed by him and has been stressed by his learned counsel at the fag end of the arguments as a pure point of law. There is no issue either on the point, still we have heard him, but have no hesitation in rejecting his contention. It was because of the non-observance of the directions issued by the Election Commission, India, that the nomination paper of Buta Singh came to be improperly rejected. The final order is that of rejection of the nomination paper and non-observance of the rules is the cause or the basis of it. It is not open to the learned counsel to ignore the final order of improper rejection and drag his case

within the purview of Section 100(2)(c). A.I.R. 1954 Supreme Court 520 cited by the learned counsel is a totally different case and has no bearing on the point raised by him. In that case the nomination paper was accepted by the Returning Officer. The Tribunal, however, held that since the candidate was below the age of 25 years it was a case of improper acceptance. The Supreme Court, however, reversed this finding and held that the nomination paper had been properly accepted by the Returning Officer, but that since the candidate suffered from a lack of qualification, the result of the election was materially affected by non-compliance with the provisions of the Constitution and, therefore, the case fell within the purview of Section 100(2)(c). Accordingly only the election of the returned candidate suffering from this lack of qualification was declared void. In the present case we have held that the nomination paper had been improperly rejected and accordingly the case falls under Section 100(1)(c) and the entire election must be held to be wholly void.

Issue No. 7.—In view of our finding that the result of the election has been materially affected on account of the improper rejection of the nomination paper of Buta Singh Respondent No. 19, we hereby accept this petition and set aside the election of Respondents 1 and 2 and declare the election to be wholly void. Since the petition is the result of a mistake on the part of the Returning Officer, the parties are left to bear their own costs.

Sd. KRISHNA SAHAI, *Member.* Sd. NAWAL KISHORE, *Chairman.*

26-8-55. 26-8-55.

BEFORE THE ELECTION TRIBUNAL, PATIALA

Nawal Kishore—*Chairman.*
Dalip Singh—*Member.*
Krishna Sahai—*Member.*

ELECTION PETITION No. 12 OF 1954

Petitioner.—S. Dalip Singh S/O Dasaundha Singh aged 27 years resident Sadhpur Viran Tehsil & District Patiala.

Versus

Respondents:—

1. Shri Surendra Nath S/O L. Nathu Lal, Lahori Gate, Patiala.
2. S. Pritam Singh S/O S. Sunder Singh, Ghurami Patti, P. O. Samana.
3. Shri Amar Nath S/O L. Chamba Ram, House No. 842, Ward No. 2, Samana Town.
4. Shri Bhagwan Sarup S/O Shri Banarsi Dass, Samania Gate, Patiala.
5. Shri Bhajan Lal S/O Jawahar, Shoe Maker, Samana Mandi.
6. S. Dalip Singh S/O S. Rullia Singh, Top Khana Road, Patiala.
7. S. Gurdial Singh S/O Hazura Singh, Nungaran Street, Patiala.
8. S. Joginder Singh S/O Harnam Singh, Village Tallanian, P.O. Fatehgarh Sahib.
9. Shri Roshan Lal S/O L. Kundan Lal, House No. 293, Ward No. 3, Samana Town.
10. Shrimati Manmohan Kaur W/O S. Gian Singh, Patiala.
11. S. Randhir Singh S/O S. Hazura Singh, Village Ludki Majra P.O. Kalaran.
12. S. Kehar Singh S/O Asa Singh, Ragho-Majra, Patiala.
13. S. Balbir Singh S/O S. Gurcharan Singh, Pleader, Bassi.
14. L. Surat Ram S/O Budh Ram Sunami Gate, Patiala.
15. S. Udham Singh S/O S. Kharak Singh, Village Danithal, Tahsil Patiala.
16. S. Naginder Singh S/O S. Sharest Singh, Dhuri Gate, Sangrur.

17. B. Sat Paul S/O L. Ram Das, Patiala City.

18. Shri Gopal Chand S/O L. Dewan Chand, Advocate, Patiala.

19. S. Buta Singh S/O S. Jassa Singh, Village Ghaunspura, P.O. Kauli.

ORDER DELIVERED ON 26-8-55.

FACTS

The petitioner Shri Dalip Singh as an elector challenges the election of Shri Surinder Nath Khosla Respondent No. 1 and Shri Pritam Singh Respondent No. 2 to the PEPSU Legislative Assembly from the Samana Constituency of the State of PEPSU. Shri Surinder Nath Khosla stood for the general seat; while Shri Pritam Singh contested the reserved seat from the Samana Constituency. The candidates filed their nomination papers on 9th January, 1954 and scrutiny was held on 13th January, 1954, and the polling took place on 24th February, 1954. The respondents 1 and 2 were declared to be duly elected and the result was published in the State Gazette on 4th March, 1954.

It was alleged by the petitioner that the nomination paper of Buta Singh Respondent No. 19 was improperly and illegally rejected under sub-rule 2 of Rule 2 of Representation of People (Conduct of Elections and Election Petitions) Rules, 1951 by the Returning Officer S. Gobinder Singh on the ground that the thumb marks of the proposer and seconder were attested by a Magistrate who had not been specified for the purpose by the Election Commission, that in the nomination paper, Buta Singh was duly proposed and seconded by Hazara Singh and Mohinder Singh respectively and that their thumb marks were verified by a First Class Magistrate who was included in the list of officers specified by the Election Commission under Rule 2 Sub-rule (2) of the said rules and that in any case the defect being technical was covered by S.36(4) of R.P. Act and his nomination paper should not have been rejected, and that the result of election had been materially affected by the improper and illegal rejection of the nomination paper of Buta Singh, Respondent No. 19 inasmuch as the entire electorate was deprived of its right to vote for a candidate who was duly nominated. The petitioner seeks to have the said election declared wholly void under Section 98(d) read with Section 100(1) (C) of the Representation of the People Act of 1951 and have the Election of Respondents Nos. 1 and 2 set aside.

The contesting Respondents Nos. 1 and 2 denied that the petitioner was an elector in the Samana Constituency and objected that verification of the petition was defective, and signatures purporting to be of the petitioner at different places were not similar in style and that the petition was not *bona fide*. They further contended that the thumb marks of the proposer and seconder on the nomination paper of Buta Singh, Respondent No. 19 were not attested in accordance with law and the nomination paper of Buta Singh was rightly rejected by the Returning Officer, that the thumb marks of the proposer and seconder on the nomination paper of Respondent No. 19 had been obtained by fraud and it was liable to be rejected on other grounds and that the result of election had not been materially affected by the rejection of the nomination paper of Respondent No. 19. The respondent No. 1, in para. 12 of his written statement has referred to the following factors on account of which the result of election had not been in any way materially affected:—

(a) Samana was a Single Member Constituency during the first election of 1951-52, but was reconstituted during the second general election of 1954 as a double member constituency consisting of 316 villages with about 60,000 votes. It is mostly rural and has 60 Biswedari villages. It was predominently Muslim before the partition of India and now displaced persons predominate. In Samana proper Bahawalpuries are settled; while refugees from prepartitioned Panjab Colony Districts are spread over the rural areas.

(b) Col. Gurdial Singh, Respondent No. 7 the Congress nominee is a Retired Police Chief of Patiala State and himself is a big Biswedar (landlord) of Rampura Phul area with quickly changing loyalities after the formation of the Union. From a new Congressite he became a Panthic and from Panthic a Congressite and so on.

(c) As against the Aristocrat Respondent No. 7, the Respondent No. 1 is a commoner and he appealed to the electorate. He is a self made man, a law graduate, a field worker and a mass speaker. He is a journalist and a writer with several publications to his credit. He belongs to village Talwandi Malak in the constituency and has contacts and relations in Samana and throughout the constituency. He

has administrative and Parliamentary experience and ability. He has been holding several offices in serveral units of All India organisations and State bodies, such as Union of Posts and Telegraph Workers, PEPSU's ex-State Employees etc. He has alliance with all the political parties and groups aligned against the Congress.

(d) Buta Singh, Respondent 19 was neither a serious candidate, nor he had the support of any party. He is not a resident of this constituency. He just filed his nomination papers. He was a displaced person having no resources of his own, ordinarily open to candidates commanding confidence of a substantial section of the electorate. He never worked in the constituency for himself. On the other hand he supported Respondents 1 and 2. He did not present any petition regarding the rejection of his nomination paper. Even if his nomination paper had not been rejected, he would have withdrawn his candidature in favour of Respondents 1 and 2 as was decided by the Sanjha Morcha which was a united front of the leftist parties and groups. In fact all the anti-Congress elements joined hands in support of Respondent No. 1; Respondent No. 2 had electoral alliance with Respondent No. 1.

(e) The petition is not *bona fide* and the petitioner is brother of Raghbir Singh Bedi, a trusted deputy of Respondent No. 7 and has been set up nominally by him. Col. S. Gurdial Singh who had full resources of his personality and party at his disposal at the election was defeated at the polls practically in a straight contest by Respondent No. 1 by over 1,100 votes. The rejection of nomination paper of Respondent No. 19 has been made a pretence on the off-chance of avoiding the whole election and depriving the candidates of their well earned success.

The respondent No. 5 supported the petitioner; while Respondents Nos. 11 and 15 supported the Respondents Nos. 1 and 2. The respondent No. 19 also supported the petitioner's case and in para. 10 raised an additional plea to the effect that respondent No. 1 was disqualified for being chosen as a member of the State Assembly because as a Managing Director of the New Age Press he had a share and interest in a contract for the supply of goods to the Government of PEPSU.

The other respondents did not file any written statements.

The following issues were framed on 19th October 1954:—

(1) Whether respondent No. 19 was duly proposed and seconded and the thumb impressions of the proposer and the seconder on his nomination paper were attested in accordance with law? O.P.

(2) Whether the thumb impressions of the proposer and the seconder had been obtained by fraud and Respondent No. 19 was not a party to them? O.R.

(3) In case issue No. 1 is found favour of the petitioner, was the Returning Officer justified in law in rejecting the nomination paper of Respondent No. 19? O.R.

(4) Whether the rejection of the nomination paper of Respondent No. 19 had materially affected the result of election? O.P.

(5) Whether the petition was not *bonafide* and had been made on behalf of respondent No. 7, Col. S. Gurdial Singh Dhillon? O.R.

(6) (a) Whether respondent No. 1 was disqualified for being chosen as a member of the State Assembly because as a Managing Director of the New Age Press, he had a share and interest in a contract for the supply of goods to the Government of PEPSU? O. Respondent No. 19.

(b) Whether respondent No. 19 is competent to raise an objection to the above effect at the stage of filing of the written statement? O. Respondent No. 19.

(7) *Relief.*—After the framing of issues a statement of the counsel for respondent No. 1 was recorded in which he stated that he did not press the pleas in paragraphs 1, 10, 11 of is written statements *i.e.* about petitioner being an elector and defective verification of the petition. He also stated that by the allegation contained in para 7(e) of the written statement that the thumb impressions of the proposer and the seconder had been obtained by fraud he meant that the proposer and seconder were asked to affix their thumb

impressions on the nomination paper of Respondent No. 11 and they affixed the thumb impressions thinking that the nomination paper was that of Respondent No. 11 (Randhir Singh). They did not know that the nomination paper was infact of Respondent No. 19 (Buta Singh).

On the application of Respondent No. 1 issue No. 3 was amended on 21st October 1954 as follows:—

Issue No. 3.—In case issue No. 1 is found in favour of the petitioner, was the Returning Officer justified in law in rejecting the nomination paper of Respondent No. 19? O.R.

It was held that Respondent No. 19 could not be allowed to circumvent the election law by raising pleas after the expiry of limitation and without depositing security which could only be done if he had filed an election petition and that the Respondent No. 19 was not entitled to lead his evidence in support of issue No. 6(a). The issue No. 6(a) and (b) have been disposed of and the order dated 16th February 1955 may be read as part of this order.

I now proceed to decide the other issues.

Issues No. 1 *and* 3.—The evidence of Shri Shamshad Ali Magistrate 1st Class P.W.3 and of Buta Singh P.W. 5 is that Hazara Singh as proposer and Mohinder Singh as seconder of Buta Singh Respondent No. 19 affixed their thumb marks on the nomination paper of Respondent No. 19 Ex. PW2/1A in his presence and he satisfied himself about their identity and that Buta Singh according to the Magistrate was identified by some lawyer. The nomination paper of Buta Singh was rejected on the ground that the thumb-impressions of the proposer and the seconder on the nomination paper were not attested by a Magistrate who had been specified for the purpose by the Election-Commission. The letters and instructions of the Election Commission and those issued by the Chief Electoral Officer to the Returning Officers have been produced by Ranjit Singh Quanungo P.W. 2 and Behari Lal, Head-Assistant of the Office of Chief Electoral Officer. The instructions on the point are contained in para. 1 clause (ii) of the directions Ex. P1/A issued by the Election Commission with its letter dated 20-9-1951 Ex. P1 to the Chief Electoral Officer, PEPSU. These were received in the office of Chief Electoral Officer, Patiala and are in the file at page 70, Ex. PW 4/1 marked A. These instructions were typed and sent to all the Returning Officers with letter Ex. PW2/3A, but clause (ii) of para. 1 was omitted from it (*vide* Ex. PW2/3B). A copy of the same instructions Ex. PW2/5A was sent in 1954 to the Returning Officers and clause (ii) of para. 1 of the instructions was omitted possibly due to a typing mistake. It is quite clear from the evidence of P.W. 4 and comparison of the instructions received from the Election Commission and those issued to the Returning Officer that clause (ii) of para. 1 of the instructions was omitted from the copy of the instructions sent to all the Returning Officers.

The clause (i) and (ii) of para. 1 of the instructions issued, by the Election Commission, under sub-rule 2 of rule 2 of the R. P. Act regarding the officers specified to attest the signature of a person reads as follows:—

(i) Any polling officer within a polling station;

(ii) Any officer authorised by or under Rule 40 to attest the signature of an election in respect of such elector.

These instructions were not redrafted in the office of the Election Commissioner, Patiala. The word 'Election Commissioner, Patiala' appears to have been loosely used by P.W. 4 as it is clear from the correspondence that there was no office of Election-Commissioner, Patiala, but it was the office of Chief-Electoral Officer.

According to Rule 40 framed under the R.P. Act Magistrates are competent to attest the signature of a proposer and seconder on the nomination paper to be filed by a candidate. It is pity that the clause (ii) was omitted from the instructions which were conveyed to the Returning Officers. The Returning Officer not being aware of the clause therefore rejected the nomination paper of Buta Singh. It has been urged by the learned counsel on behalf of the respondents that Hazara Singh proposer has not been produced and Mohinder Singh says that he affixed his thumb mark on the nomination paper Randhir Singh at the instance of Buta Singh and S. Harcharan Singh Advocate was not allowed to be produced and that the statement of Buta Singh alone is not sufficient to prove that he was duly proposed and seconded. It is clear from the statement of S. Shamshad Ali P.W. 3 that the thumb mark of Hazara Singh as proposer and Mohinder Singh as seconder were affixed on the nomination paper of Buta Singh respondent 19 and their thumb marks were duly attested by

Magistrate in accordance with the instructions of the Election Commission. I, therefore, find that Buta Singh was duly proposed and seconded and the Returning Officer had committed a mistake in rejecting his nomination paper.

The second part of issue No. 1 is whether the attestation of thumb marks of proposer and seconder of Buta Singh's nomination paper was in accordance with law. It is proved that the thumb marks of the proposer and seconder were attested by a Magistrate who was specified by the Election Commission under Sub-rule (2) of Rule (2) of R. P. Rules 1951. The Election Commission directed that in the presence of any polling officer or any officer authorised under Rule 40 of the R. P. Rules 1951 the thumb mark of an illiterate person may be affixed. According to rule 40 any Magistrate can attest the thumb mark of an elector. The learned counsel for the respondents after referring to the definition of sign in Section 2(k) of the R. P. Act objected that the directions of the Election Commission specifying that any officer authorised to attest the Thumb mark of an elector by Rule 4, not having been published by any notification in the official Gazette under Section 169(i) of the Act was not made known to the persons concerned and that the principles of natural justice require that before it can be acted upon it must be made known to the persons concerned and that the said instructions have not, therefore, got the force of law or rules and the attestation by a Magistrate was, therefore, not in accordance with law. He relies on 7 E.L.R. 64 in which it was held that attestation of a proposer on the nomination paper of a candidate by an Additional District Magistrate not authorised in this behalf by the Election Commission is not valid. It is not clear from the report of this case if the instructions of the Election Commission were produced in that case and brought to the notice of the Tribunal. In the present case instructions of the Election Commission specifying any officer authorised under Rule 40 which include any Magistrate have been produced which show that a Magistrate was authorised to attest the mark of a proposer or seconder on the nomination paper of a candidate. The learned counsel for the petitioner has referred to Section 2 (3) of the Act and Rule 26(5) of the rules and contended that unless any requirement under the Act or rules is required to be published in the Gazette it is not necessary to publish anything to be specified by the Election Commission under the Act or rules, and that Rule 2(2) which requires the Election Commission to specify any other officer to attest the mark of an elector does not provide that such specification should be published in the official Gazette. In the absence of any requirement of any provision of the Act or rules under the Act, anything to be specified by the Election Commission need not be published. In my view the nomination paper of Buta Singh was attested in accordance with law and I find this issue in favour of the petitioner.

Issue No. 3.—The nomination paper having been duly signed and properly attested the Returning Officer was not justified in law to reject it. I, therefore, hold that order of rejection of nomination paper of Buta Singh Respondent No. 19 was improper.

Issue No. 2.—The respondent's contention is that the nomination paper was otherwise liable to rejection on several other grounds, one of them being that the thumb impressions of the proposer and the seconder were obtained by fraud and that the respondent No. 19 did not produce the proposer and the seconder before the Magistrate. No further particulars of fraud were given in the written statement and after the issues were framed, the learned counsel for the respondents stated that by fraud as alleged in para 7(e) of the written statement he meant that the proposer and seconder were asked to affix their thumb marks on the nomination paper of Randhir Singh Respondent No. 11 and that they did not know that the nomination paper was infact of Respondent No. 19. The respondent has examined Mohinder Singh R.W. 3 and Randhir Singh Respondent No. 11 as R.W. 4 only to prove his allegation of fraud. Mohinder Singh has stated that he affixed his thumb impression on the nomination paper of Randhir Singh Respondent No. 11 at the instance of Buta Singh respondent No. 19. He is illiterate and cannot say whether it was a nomination paper of Respondent No. 11 or 19 which had been thumb marked by him. He says that he was told by Respondent No. 19 that it was the nomination paper of Respondent No. 11. He admits that he also affixed thumb marks in the presence of S. Shamshad Ali Magistrate on a printed paper like Ex. P.W. 2/1A. In cross-examination the witness further admits that a few days before the filing of nomination paper Randhir Singh had met him and told him that he should affix his thumb impressions on his nomination paper which would be brought by Buta Singh. When the witness came to know that the thumb impressions which were meant for the nomination paper of Respondent No. 11 had been got from him and

Hazara Singh, by Respondent No. 19 on his own nomination paper, he did not take any steps regarding the fraud having been played upon him.

The evidence of Randhir Singh R.W. 4 is that he had asked Buta Singh to have one nomination paper filled up and signed by a proposer and seconder on his behalf and on the day of filing of nomination paper, Buta Singh showed him a blank paper thumb marked by a proposer and seconder but he told him not to file it as it was bound to be rejected on account of thumb impressions not having been attested by a Magistrate. The witness admits in cross-examination that he had not asked Mohinder Singh or Hazara Singh to affix their thumb impressions on his nomination paper and contradicts the previous witness R.W. 3 on the point. The respondent No. 1 put S. Harcharn Singh Advocate in the witness box and wanted to examine him to disprove the identification of the proposer and seconder as deposed by Buta Singh Respondent No. 19 as P.W. 5 and S. Shamshad Ali Magistrate P.W. 3, but the Tribunal was of opinion that the petitioner's evidence did not touch the point involved in the case, and it was of no value and need not be rebutted. S. Harcharn Singh was therefore not allowed to be examined and his statement was not recorded (*vide* order dated 9th July, 1955). This is all the evidence which has been produced by the respondent on this issue.

The nomination paper Ex. PW2/1A shows that it was Buta Singh Respondent No. 19 who was proposed and seconded by Hazara Singh and Mohinder Singh. The thumb impressions of proposer and seconder on Ex. PW2/1A are not seriously denied by the Respondents and also by Mohinder Singh R.W. 3. It is further proved by the testimony of S. Shamshad Ali Magistrate (P.W. 3) that proposer and seconder affixed their thumb impressions on the nomination paper of Buta Singh Ex. PW2/1A in the presence of the Magistrate. The evidence of Mohinder Singh and Randhir Singh R.Ws. 3 and 4 respectively that Buta Singh secured the thumb marks of proposer and seconder by saying that it was the nomination paper of Randhir Singh cannot be believed. Mohinder Singh and Randhir Singh contradicted each other and their evidence is wholly insufficient and unworthy of credit to establish fraud. I, therefore, find that allegation of fraud is not proved and decide this issue against the respondents.

Issue No. 4.—Before I proceed to discuss the evidence of the parties on this issue, the legal point as to whether in the case of an improper rejection of a nomination paper of a candidate, the burden of proof of showing material affect remains on the petitioner or it shifts to the respondents on account of any presumption and if any such presumption arises in this case, may be considered.

The words of Section 100(1)C of R. P. Act, 1951 "the result of election has been materially affected" have been the subject matter of much controversy before the Election Tribunals and the opinions expressed have not always been uniform and consistent as remarked by the Hon'ble Judge of the Supreme Court in 10 E. L.R. 30.

The learned counsel for the petitioner has argued on the authority of a large number of cases reported as 1 E.L.R. 330 (338), 2 E.L.R. 1, 8, 12, 20, 88, 121, 136, 245, 266, 3 E.L.R. 81 and 305, 4 E.L.R. 301, 441, 5 E.L.R. 81, 6 E.L.R. 368, 7 E.L.R. 338, 428, 9 E.L.R. 385, 10 E.L.R. 1, that improper rejection of a nomination paper of a candidate raises a strong presumption and the Tribunal must conclude that the result of the election has been materially affected, that the burden is discharged without the necessity of leading any evidence and that it is impossible to conceive of any legal evidence to rebut the presumption and any amount of evidence adduced would be in the nature of things, conjectural and speculative.

It has been contended by the learned counsel for the respondents that in view of the plain meaning of S. 100(1)C of the R. P. Act, 1951 the burden is on the petitioner to establish positively that in the case of an improper rejection of a nomination paper of a candidate the result of election has been materially affected and in such a case no presumption arises by the mere fact that electorate has been deprived of the right to vote for the candidate whose nomination paper has been rejected, that in any case in the circumstances of the present case when it is clear from the evidence of Buta Singh that he was not a serious candidate and had not to contest the election, no presumption can be said to arise in favour of the petitioner and the onus remains on him to prove the material affect on the result of the election and that taking the second aspect of the case if we assume that any initial presumption arises in favour of the petitioner it is discretionary for the court to draw a presumption in the given circumstances and such a presumption is not irrebuttable and that the respondent has led evidence of respectable witnesses to show that the result of the election has not been materially affected in the circumstances of the present case.

On behalf of the respondent No. 1 reliance is placed on the plain wording of Section 100(1)C, observations of the Supreme Court in 9 E.L.R. 231 at page 234, 10 E.L.R. 30 at page 36, 39, 9 E.L.R. 36 (Nasik), Observations made in 3 E.L.R. 348 repeated in 9 E.L.R. 36 at page 51 and 52 and the observations of Secundrabad Tribunal, in 2 E.L.R. 414 which are repeated in 5 E.L.R. 129 at P. 144. He has also incidently referred to the rulings of Rajasthan Tribunals in 5 E.L.R. 129, 6 E.L.R. 470, 7 E.L.R. 407, 9 E.L.R. 21 to show that if any presumption arises it is a rebuttable one and that in 3 E.L.R. 147, 7 E.L.R. 270 the evidence produced was found sufficient to rebut the initial presumption. Lastly he has argued that Nasik Tribunal in 9 E.L.R. 36 and Supreme Court in 10 E.L.R. 30 have laid down the correct law that the petitioner must prove material affect before he can succeed. Section 100(1)C says that if the Tribunal is of opinion that the *result of* election *has been materially affected* by the improper acceptance or rejection of any nomination, the Tribunal shall declare the election to be wholly void. The plain meaning of this clause is that before an election of a candidate whose nomination paper has been improperly accepted or rejected can be set aside, the Tribunal must form an opinion and come to a finding that result of election *has been materially affected.* The learned counsel for the petitioner has laid great emphasis on the fact that in a series of previous cases it has been held by various Tribunals that on account of presumption in favour of the petitioner the burden is shifted to respondents to prove material affect in the negative form *i.e.* the result has not been materially affected. I must say frankly that on this important point of law we have got no clear authoritative pronouncement of the Supreme Court that in a case of improper rejection of nomination paper a presumption arises which in effect would place the burden of proving material affect on the respondents. However there are two authorities of the *Supreme Court* which provide good deal of guidance on this point and in the light of the observations made by their Lordships in the case of improper acceptance which is at par with the improper rejection that Clause 100(1)C should be interpreted and seen as to on whom lies the burden to prove material affect.

In almost all the rulings the Tribunal realised the difficulty of proving material affect by positive evidence and this difficulty was got over by introducing the fiction of presumption, that in such cases (*i.e.* of improper rejection) the result of election was materially affected. The presumption was supported on the argument that the whole of the electorate was deprived of its right to vote for the candidate whose nomination paper had been rejected. Thus we find that in a large number of cases it has been held that there is a presumption in the case of improper rejection of a nomination paper and that the result of election has been materially affected. Acting on this presumption alone the elections have been held void (*vide* 7 E.L.R. at page 455). In some cases no evidence was considered and discussed to show that even the presumption had been rebutted. In other cases the presumption was held to have been rebutted by the respondents. This view is based on the Rohtak case decided in 1921 reported as Hammonds reports of the Indian Election Petitions 1920 Vol. I at page 183 which in turn is based on English decision—Hackney case, 1874 (2 M.O. & H. 77) which is not applicable because English Law governing such matter is different from the Indian Law. The view that presumption is irrebuttable did not find favour in the recent decisions of Election Tribunals (3 E.L.R. 147 1 E.L.R., 271, 5 E.L.R. 129, 2 E.L.R. 414, 7 E.L.R. 407, 6 E.L.R. 470, 9 E.L.R. 21 and 9 E.L.R. 36). In 5 E.L.R. 129 it was held that the view that in the cases of improper rejection the election must in all cases be set aside is not correct and difficulty in proving that election has been materially affected in the case of improper rejection is no reason to ignore the clear words used in Section 100(1)C and their plain meaning. The wording of Section 100(1)C of R. P. Act 1951 are:—

> "100. Grounds for declaring election to be void.—
>
> (1) If the Tribunal is of opinion.....
>
> (c) that the result of the election has been materially affected by the improper acceptance or rejection of any nomination,
>
> the Tribunal shall declare the election to be wholly void."

In 6 E.L.R. 470 at page 491 it was observed:—

> "The Legislature must have been fully conscious of the various decisions of the Election Commissioners under the Old Law that it had been constantly held that it was very difficult to prove in the case of improper rejection that the result of the election had not been materially affected. In spite of this they thought it proper to retain the words in question in the context of rejection as well. More over it appears to be the anxiety of Legislature that an election shall not

be lightly set aside on any technical grounds. The setting aside of an election is a very serious matter as a good deal of time and money which is spent, is spent in vain. The Legislature therefore, thought that unless by any illegality or improper rejection or acceptance of a nomination paper the result of election had been materially affected the election should not be declared void.

A close examination of this chain of 24 cases in which presumption has been drawn would show that some Tribunals (1 E.L.R. 330, 2 E.L.R. 88 4 E.L.R. 441) say that general presumption may be drawn and one Tribunal (3 E.L.R. 305) has called it an ordinary presumption while others (2 E.L.R. 245, 3 E.L.R. 147) say that a strong presumption arises. The Delhi and Patiala Tribunals (in 2 E.L.R. 1, 8, 12 and 136) do not clearly mention about raising of presumption but have simply concluded from the fact of improper rejection that result of election has been materially affected. Some Tribunals have held the presumption to be rebuttable while Lucknow Tribunal (in 2 E.L.R. 266) went so far as to hold it to be irrebuttable.

How an approach to the point under discussion has been made by some of the Tribunals will be clear from the following observations:—

In 2 E.L.R. 414 (Secundrabad Tribunal) the Election Tribunal has observed "We cannot and do not wish to lay down as an invariable rule admitting of no exception that whenever a nomination paper is improperly rejected the election should be wholly set aside and it should be *presumed* that this event has naturally affected the result. This will be contrary to what appears to me the intention of the Legislature as it appears in Section 100(1)C. There would have been no need for providing that the Tribunal should form its *opinion regarding this question.*"

This observation was referred to in 5 E.L.R. 199 at page 144 and it was further held that the view that the words the result of Election has been materially affected in Section 100(1)C refer only to "acceptance" of a nomination and not to "rejection" and the view that in case of improper rejection the election must in all cases be set aside is not correct. The difficulty of proving that the election has not been materially affected, in the case of an improper rejection is no reason to ignore the clear words used in Section 100(1)C and their plain meaning. In 1 E.L.R. 271 it is observed that "Every word in a statute must be given its natural meaning as far as it is possible and superfluity cannot generally be attributed to Legislative enactment. It seems to us therefore that a Tribunal can only declare an election void if in the opinion of the Tribunal the result of election has been materially affected in consequence of an improper rejection of nomination".

Thus it cannot be said that these words are superfluous in the context of the word "Rejection". In 2 E.L.R. 1, 8, 12, 36 there is no reference of drawing presumption but a conclusion is drawn from the fact of improper rejection that result has been materially affected. In 2 E.L.R. at page 19 it is observed "When, therefore, dealing with a grave irregularity like the improper rejection of a nomination, the rule of English Law is in our opinion fully applicable and we are not disposed to agree that the learned Commissioners in the Rohtak case went wrong in relying on the English decisions". It was said that most of the decisions in which presumption has been drawn are based on the Rohtak case decided in 1921 (reported in Hammond Reports of the Indian-Election Petitions 1920 Vol. 3 at page 183 which in turn is based on certain English decisions which according to the learned counsel are not applicable. The Supreme Court in 10 E.L.R. 30 after comparing the English Law and Indian Law has drawn a distinction between S.13 of Ballot Act and Section 100(1)C of R. P. Act, 1951, and has explained the plain meaning of Section 100(1)C in its judgment, (10 E.L.R. 30). This was no doubt a case of improper acceptance but Section 100(1)C covers both the cases of improper acceptance and improper rejection and both the cases covered by the clause are at par. The burden of proving material affect in the case of improper acceptance has been definitely held by the Supreme Court to be on the petitioner and it is argued that on the analogy and same reasoning the issue of proving material affect in the case of improper rejection should be on the petitioner and he must discharge the onus before he can ask the Tribunal to set aside the election.

The question of burden of proof came up before the Supreme Court in 10 E.L.R. 30 and their Lordships after discussing the English and Indian Law held that the volume of opinion preponderates in favour of the view that the burden lies upon the objector (i.e. the petitioner), and that the language of Section 100(1)C of the R. P. Act clearly places the burden of proving that the result of

the election has been materially affected, on the petitioner who impugns the validity of the election though under the English Act (Ballot Act 1872, Section 13) the burden is upon the respondent to show in the negative that the result of election has not been materially affected. Before an election can be declared to be wholly void under Section 100(1)C the Tribunal must find that the result of the election has been materially affected". It was recognised by Their Lordships in 10 E.L.R. 30 at page 38 that "the petitioner in such a case is confronted with a difficult situation but it is not possible to relieve him of the duty imposed upon him by Section 100(1)C and hold without evidence that the duty had been discharged. Should the petitioner fail to adduce satisfactory evidence to enable the court to find in his favour on this point the inevitable result would be that the Tribunal would not interfere in his favour and would allow the election to stand. As to the type of the evidence required to prove that the result of election has been materially affected the following observations were made by their Lordships in 10 E.L.R. 30 at page 39 :—

> "It is impossible to accept the *ipse dixit* of witnesses coming from one side or the other to say that all or some of the wasted votes would have gone to one or the other on some supposed or imaginary ground. The question is one of *fact* and has to be proved by positive evidence. If the petitioner is unable to adduce evidence in a case such as the present, the only inescapable conclusion to which the Tribunal can come is that the burden is not discharged and that the election must stand. Such result may operate harshly upon the petitioner seeking to set aside the election on the ground of improper acceptance of a nomination paper but neither the Tribunal nor this court is concerned with the inconvenience resulting from the operation of law. How this state of things can be remedied is a matter entirely for the legislature to consider".

In an earlier case it was held by the Supreme Court in 9 E.L.R. 231 at page 234 that the general rule is well settled that statutory requirements of election law must be strictly observed and that an election contest is a purely statutory proceeding unknown to the Common Law and that the court possesses no Common Law power. It is also well settled that it is sound principle of natural justice that the success of a candidate who has won it an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of the law. It is thus clear from these authorities that the burden of proving material affect remains on the petitioner according to the plain meaning of Section 100(1)C and further the petitioner must prove in the affirmative by positive evidence that the result of the election has been materially affected by improper rejection of nomination. The difficulty of proving material affect cannot be got over by introducting the fiction of presumption and it cannot be invariably presumed in every case of improper rejection from this fact alone that electorate has been deprived of its right to vote. There may be cases in which the candidate whose nomination paper was rejected was dummy or had not to contest the election seriously or would have withdrawn from the contest if his nomination paper had not been rejected. In such a case the entire electorate would not be deprived of its right to vote and no presumption would arise.

A contrary view that no such presumption arises in the case of improper rejection of nomination paper was taken in 9 E.L.R. 36 (Nasik), and 3 E.L.R. 248 (Bombay). After comparing the English Law and the provision of Section 100(1)C, of Indian Law, the words"—has been materially affected—" have been clearly interpretted to mean that it is for the petitioner to prove in positive form that result has been materially affected and onus cannot be thrown on the respondent to show that improper rejection had not affected the result of election. The reasons given by the Bombay Tribunal in 3 E.L.R. 248 are so sound and convincing that these were considered worthy of repetition in 9 E.L.R. 36 at page 51-52. These observations of the Tribunal are useful and I reproduce them :—

> "Under the Indian Law if a petitioner has to bring his case within the provisions of section 100(2)C, mere proof of non-compliance with even the mandatory provision of the Constitution of the Representation of the People Act is not enough, even though such non-compliance or gross irregularity may possibly have affected the result of the election. The provisions of section 100(2)C require the petitioner to prove that the

result has been materially affected by such non-compliance or irregularity, while under the English law an Election Tribunal would be justified in setting aside the election if it were satisfied that there was a likelihood that the result of the election may have been affected by the non-compliance or the irregularity; *vide* the decisions of the Election Tribunals in Malik Barkat Ali Moulvi Moharamali Chisti and Choudhari Amar Singh V. Pandit Nanak Chand cited in Hammond's Election cases, pages, 469, 473, 219, 221 and Shrivastava's Indian Elections and Election Petitions, Vol. II page 214. This difference arises from the use in section 100 of the words 'the result of the election has been materially affected' in the positive form, instead of the words 'such non-compliance or mistake did not affect the result of the election' as were used in section 13 of the Ballot Act which have now been replaced by the words 'that the act or omission did not affect its result' in section 16(3) of the Representation of the People Act, 1949. In framing these provisions in the negative form, the English Legislature seems to have followed the practice which prevailed in applying the common law of Parliament to such matters previous to such enactments. In India, however, in spite of the fact that this material difference in the election law as prevailing in England and in this country was specifically noted by Election Tribunals so long ago as 1921, in the cases in which we have previously made reference, the Indian Legislature, having the English Legislation before it, has considered it fit to enact even the subsequent legislation by repeating the same provisions which existed in the previous Indian Legislation. The words in the positive form as used by our Legislature in section 100 are such that it is almost impossible for us without doing serious violence to the language to convert them into a negative provision, such as has existed in England, which alone would justify the onus being thrown on the respondent to show that the non-compliance with the law or the irregularities charged had not affected the result of the election. To do any such violence to the language used in section 100 would not be in consonance with the cannons of construction which have normally to be applied in the interpretaion of statutes: (*vide* Maxwell on Interpretation of Statutes, 9th Edition page 3—6)."

The same Tribunal further made the following observations:

"In the case of the improper rejection of a nomination it would be practically impossible for the aggrieved candidate to prove positively that the result of the election had been materially affected unless he was able and was allowed to call a very large number of persons who have actually voted to depose that they would have voted for him in such number as to cast a majority of votes on which he could have been elected. In England and in Municipal elections in Bombay the normal procedure is to declare an election void in all cases of improper rejection of a nomination as the electorate would not have had the opportunity of deciding whether to vote or not for the particular candidate by reason of improper rejection of his nomination. As regards the improper acceptance of a nomination if the particular candidate whose nomination so accepted happens to secure a majority of votes, then it would be obvious that the result of the election has been materially affected; but in any other case, the same difficulty would arise in proving that the result of the election has been otherwise materially affected as in the case of the improper rejection of a nomination. Although we recognise all the difficulties that would arise in such cases, we still find it impossible to construe the clear words used by the Legislature in any other manner than their normal import. If there is a defect in Legislation which calls for a remedy, it cannot be corrected by a decision of this Tribunal and we must leave it to the Legislature to consider whether it would not be advisable to put the law in this respect on the same footing as the law prevailing in England at present. So far as section 100 of our Act is concerned the way in which the relevant provisions have been framed by the Indian Legislature is such that *we cannot but hold that in such cases the onus remains on the petitioner to show* at least a reasonably strong likelihood of the result of the election having been materially affected by the non-compliance with the law or irregularity of which he complains as when a nomination has been improperly rejected, before he can ask the Tribunal to act under that section."

These observations amply support the view that the onus remains on the petitioner to show that result of election has been materially affected before he can ask the Tribunal to act under Section 100(1)C.

It would seem that no such presumption arises necessarily when election (Polling) takes place and majority of voters have exercised their right to vote. It may be that in the given circumstances such a presumption may arise but it would all depend upon what the facts are in each case. This view is also supported by the observations in 2 E.L.R. 414 in which the Secundrabad Tribunal said that presumption does not arise in every case of improper rejection.

It is next argued by the learned counsel for the respondents that there has not been proper approach to the question in the large number of reported cases in which presumption has been drawn and that they are based on Rohtak case which in turn is based on English law, that these cases are not in consonance with the observations of the Supreme Court made in 9 E.L.R. 231, 10 E.L.R. 30. The words "has been materially affected" used in Section 100(1)C, R.P. Act 1951 have not been properly construed and in view of the plain meaning of Section 100(1)C and observations of Supreme Court, presumption in every case of improper rejection cannot be drawn and Bombay and Nasik Tribunals in 3 E.L.R. 248 and 9 E.L.R. 36 lay down the correct proposition of law on the point and number of cases, however, large and even flood of decisions should not carry weight when they go against the spirit and intention of legislature and plain meaning of Section 100(1)C, and that introduction of the fiction of presumption has the effect of placing the burden on the respondents to prove in the negative form that result has not been materially affected. His contention is that the petitioner should establish in the case that result of election would have been different if the nomination had not been rejected, and he would have seriously contested the election and not withdrawn before any such presumption under Section 114 Indian Evidence Act can possibly arise. The force of this argument was also realised by one of the Tribunals by observing that the wording of clause 100(1)C are capable of interpretation that it must be proved by positive evidence by the petitioner in the case of improper acceptance or improper rejection that the successful candidate would not have been elected.

In short the various Tribunals in a series of cases relying on the fiction of presumption have thrown the onus on the respondent to prove material affect in the negative form against the spirit and intention of the Legislature and the plain meaning of Section 100(1)C. I am fully conscious of large number of cases in which presumption has been raised. They have all my respect and consideration but have no binding authority. I find myself unable to fall in line with their view because it is not in keeping with the grammatical and literal construction of the wording of Section 100(1)C. A discordant note was struck by the Bombay Tribunal in 3 E.L.R. 248 and a bold contrary view was expressed by Nasik Tribunal in 9 E.L.R. 36 which in my view is also supported by the observations of the Supreme Court to a great extent. The Secundrabad Tribunal in 2 E.L.R. 414 also supported this view that presumption cannot be raised in every case of improper rejection. For the reasons given above the more correct view appears to me to be the one taken by the Bombay and Nasik Tribunals. I am in complete agreement with this contrary view expressed by the Bombay and Nasik and Secundrabad Tribunals on the point which I think derives further support from the observations of Supreme Court made in 9 E.L.R. 231 and 10 E.L.R. 30. It follows from the trend of these judgments that it becomes a question of fact in each case depending upon the evidence led by the parties whether a presumption should be drawn or not and that the presumption cannot be drawn merely from the argument that the entire electorate has been deprived of its right to vote for a candidate whose nomination has been rejected. It is purely a question of fact if in the given circumstances the candidate whose nomination paper has been rejected was dummy candidate or not a serious candidate or he had to withdraw from the contest ultimately and on the proof of these facts by the petitioner, the Tribunal may then draw a presumption which again is capable of rebuttal. I think that the contrary view taken by the Bombay and Nasik Tribunals (mildly supported by the Secundrabad Tribunal) is more in accordance with the observations of the Supreme Court and is also in consonence with the plain meaning of Section 100(1)C as interpreted by different Tribunals and Supreme Court.

As matter stand I am bound by the interpretation of Section 100 (1) C as given by the Supreme Court in 10 E.L.R. 30 and adopting the view of Bombay and Nasik Tribunals, I am definitely of opinion that in every case of improper rejection presumption of material affect on the result of election does not arise and the burden cannot be thrown on the respondent to prove material affect in

the negative form. However, in the given circumstances a presumption may be drawn, but it is capable of rebuttal. In my view it is possible to rebut such a presumption by evidence which may be adduced by the petitioner in some cases. I am not prepared to go so far as to hold that it is impossible to conceive of any legal evidence which can rebut such a presumption. Human mind is constantly developing and who knows that at any time in future some cogent and definite evidence apart from conjectural and speculative may be forthcoming in some cases. It will be too much to lay down such a general proposition of sweeping nature that no legal evidence is possible to rebut a presumption which may or may not arise from improper rejection of a nomination paper in given circumstances of each case.

The next point to consider is whether in this case there are any facts and circumstances which would give rise to a presumption that result of election has been materially affected. In the present case, Buta Singh says that he stood on the ticket of the Forward Bloc and filed his nomination paper which was rejected, and that he still had a chance of being returned even if all parties had been against him. It is in evidence of the respondents' witnesses that Forward Bloc was part of Sanjha Morcha which supported the respondents No. 1 and 2. Forward Bloc or Sanjha Morcha did not set up any candidate. Buta Singh no where says that if he had not been set up by the Forward Bloc or Sanjha Morcha, he would have still contested the election as an independent candidate nor does he say that he would not have withdrawn from the contest in any circumstances. The respondents' evidence shows that Buta Singh had not done any propaganda, toured the constituency or published any news or any paper about his candidature, that he was not backed by any party nor had he any personal influence in the Ilaqa, that he was a sort of dummy candidate and would not have seriously fought the election, but would have withdrawn. It is also clear that Buta Singh did not complain against the rejection of his nomination paper nor did he take any other steps after his nomination paper was rejected. He did not file the petition nor did he join the petitioner. The election was fought on a party basis and contest was between the Congress and Independent candidate (Respondent No. 1) who was backed by all other parties. In similar circumstances the Tribunal in 9 E.L.R. 31(59) reached the conclusion that when a person whose nomination has been wrongly rejected makes no protest by filing petition or otherwise, no inference, can be drawn that an election has been materially affected. In any case Buta Singh's statement cannot be relied upon and there is no other positive proof to hold that he was a serious candidate and would have contested the election. In these circumstances it would be too much to hold that Buta Singh would have entered the arena and fought the election. Besides the actual polling took place in the constituency and the majority of the electorate had exercised their right to vote. In the absence of the positive and convincing proof, it cannot be said that Buta Singh had to come in the field and the electorate was deprived of its right to vote. The subsequent conduct of Buta Singh in not protesting against the rejection of his nomination paper amply shows that he was not serious to contest the election and in all likelihood he would have withdrawn when he found that he was not backed by any party and the Forward Bloc, and Sanjha Morcha consisting of Akali Party, Communist Party, Kisan Sabha, P.S.P., Hindu Maha Sabha were all supporting the respondents No. 1 and 2. There were heavy odds against him. The congress backed the congress candidate Shri Gurdial Singh and all the other parties were helping the respondents No. 1 and 2. In view of the circumstances of the present case and the facts proved on the record, I am of the opinion that no presumption arises in favour of the petitioner that the result of election has been materially affected from the mere fact of improper rejection of nomination paper of Buta Singh and that the electorate was deprived of the right to vote for him. On the other hand, it appears from the statement of Buta Singh and respondent's evidence that he was not serious to contest the election and would not have fought the election even if his nomination paper had been accepted. In the circumstances of this case the petitioner, therefore, must prove that the result of election has been materially affected.

It now remains to consider the evidence of parties and to determine if the petitioner has succeeded in proving that the result of the election has been materially affected and in the alternative if it is assumed that any presumption arises, whether such a presumption stands rebutted from the respondent's evidence, in the circumstances of the case, and from the subsequent conduct of Buta Singh in not filing the petition or making any protest against his rejection. The above discussion on the law point leads me to the conclusion that under the Statute the petitioner was to discharge the burden of showing that the result of election had been materially affected by the improper rejection of the nomination-paper

of Buta Singh. The only evidence of the petitioner consists of his own statement as P.W.1 and P.W.5 Buta Singh. The petitioner in his statement states that Buta Singh stood on the Kisan Sabha ticket, that he had the support of refugee voters who were about 1000 in the Samana Constituency, that there were about 5000 tenants in the Samana Constituency, that Buta Singh commanded influence equally in all the 310 villages of the constituency, that the contest was between Independent candidates and the congress-candidate. The witness did not say if Buta Singh had joined any other scheduled caste candidate with him. Buta Singh P.W.5 contradicted the petitioner on these points and stated that he stood on ticket of Forward Bloc, that number of refugee voters were 10000 or 11000 and of tenants 8000 or 9000, that he had considerable influence in two police stations Ghagga and Samana, that he had the support of the Sanjha Morcha consisting of Communist Party of India, All India Forward Bloc, Riasti Akali Dal, Raman Group, Haina Parja Mandal and that Respondent No. 2 (a scheduled caste candidate) had decided to fight the election in collaboration with him before the rejection of his nomination paper. The petitioner at first stated in examination-in-chief that there was no Kisan Sabha but in cross-examination said that his first statement was wrong and there was a Kisan Sabha. He does not know the President or Secretary of Kisan Sabha and cannot say how many members it had and if Kisan Sabha had set up any other candidate. The petitioner further said that a meeting of 300 or 400 refugees was held at the house of Ram Lal in village Budhmar where refugees had decided to vote for Respondent No. 19, but neither Ram Lal nor any other refugee out of 1000 persons has been produced to corroborate the bare statement made by the petitioner. According to the petitioner 1000 persons did not vote after Buta Singh's nomination paper was rejected and that about 50% voters did not actually vote. It is admitted by the petitioner and Buta Singh that the latter (Buta Singh) does not reside in the Samana Constituency. It has been stated by Buta Singh (P.W. 5) that he stood on the ticket of the Forward Bloc and that he was President of the District Kisan Sabha and as refugee he had the support of tenants and refugee voters. In cross-examination the witness has admitted that he applied to General Mohan Singh, the Chairman of All India Forward Bloc asking for permission to stand but he was told verbally by the chairman that he was at liberty to do so. The witness does not know what orders were passed by the Chairman of the Forward Bloc on his application and he has no evidence in writing to show that he was permitted to stand. Even General Mohan Singh or any office holder of the Forward Bloc has not been examined to support the alleged statement of the witness that he stood on the ticket of the Forward Bloc. As regards the influence of Forward Bloc the witness says that there were 15 members of Forward Bloc in Samana Constituency and only one other candidate Lt. Pritam Singh stood from Sultanpur Constituency on Forward Bloc ticket, but he too withdrew in favour of S. Atma Singh, a candidate of the Akali Dal. The witness mentioned the names of Swaran Singh, Wirsa Singh, Santa Singh and Gurdial Singh as active members of Forward Bloc in Samana Constituency but admitted that they worked for and supported respondent No. 1 Shri Khosla, Buta Singh did not say when he was President of Kisan Sabha and how he went out of it. He admitted that Kisan Sabha maintained record and that it had not set up any candidate. No office holder of Kisan Sabha has been examined by the petitioner to support the allegation of the witness. He admitted that he had no list to show that there were more than ten or eleven thousand of refugee voters and that this was his impression only. According to the petitioner Buta Singh relied on the support of refugee and tenant voters but out of 11000 Refugees and 9000 tenants not a single person has come forward to support the petitioner and Buta Singh. Barring the statements of the petitioner and Buta Singh there is no other evidence to show that the number of refugee and tenant voters was 10000. The petitioner puts the number of refugee voters at 1000; where as Buta Singh has stated the number of refugee voters as 10,000. Buta Singh has merely mentioned the figures from his impression. Not a single person from the Sanjha-Morcha Party has been examined by the petitioner to show that Buta Singh had the support of Sanjha Morcha. Buta Singh when asked if Respondent had the support of Sanjha Morcha he avoided the answer by saying that he was not definite. Buta Singh admitted that respondent stood on the National Front Ticket and quite a number of National Front candidates won the election. The nomination paper of Buta Singh was rejected and in the ordinary course, he being affected by rejection of his nomination paper would have filed the election petition but his explanation that he was away to Calcutta, is not convincing as he admits that he came to PEPSU for a week or 10 days and again came here after the result of election was published. He did not take any steps after the rejection of his nomination, nor did he file any petition.

It is clear from the statements of Buta Singh and the petitioner that he was not set up by any party nor he had the support of any party. The bare statement of

Buta Singh that he stood on the ticket of the Forward Block is not at all supported by any other evidence. The petitioner said that he stood on Kisan Sabha ticket. No office holder of Kisan Sabha or Forward Block or Sanjha Morcha nor any refugee or tenant voter was examined to show that Buta Singh had the support of those bodies or was authorised by them to stand on their ticket. According to Buta Singh he started canvassing support and toured the constituency on foot or cycle in November, 1953, but admits that he had not published any posters or news in any paper regarding the fact of his candidature and that he did not incur any expense. Except his own statement which is not believable, there is no other proof to show that he was a serious candidate and had done any propaganda in the villages or approached any body of persons to canvass support. If he had gone about in villages or obtained copies of electoral roll he must have incurred some expense however small. It is difficult to believe that he incurred no expense at all on his propaganda work. The petitioner's statement is equally unworthy of credence and is inconsistent with that of Buta Singh.

The evidence of petitioner is meagre, unreliable and wholly insufficient to prove that the result of election has been materially affected.

Respondents' Evidence.

The respondents No. 1 and 2 in rebuttal have examined 22 witnesses including themselves to show that rejection of nomination paper of Respondent No. 19 had not materially affected the result of election. Shri Khosla Respondent No. 1 has sworn that he belongs to Talwandi Malak in Samana Constituency and his family resides and owns land in 10 villages. Describing his public career, he states that his father held high positions of Assistant Commissioner, Deputy Commissioner, Commissioner, Revenue Commissioner in the State and had personal relations with the people, his brother was Tahsildar and Income-tax Officer and he himself was a Section 30 Magistrate and Sub Judge for 8 years. He resigned in 1946 to take part in politics but his resignation was not accepted and he was dismissed. He became a public worker among the masses and was General Secretary of National Front and Secretary of United Front Party and Deputy Leader of the Opposition. He was President of Post and Telegraph Association and of Ex-State Employees. He toured the Constituency for 4 months before the Election for propaganda to contact the voters. He stood on National Front ticket and all other party candidates had withdrawn in his favour. He had the support of leftiest parties—Communist, Akali (Raman Group) Forward Block, Hariana Parja Mandal, Hindu Maha Sabha, and Akalies of Master Tara Singh Group, Scheduled Caste Federation (a body of Harijans), workers of Jan Sangh. The main contest was between independent candidates Respondents 1 and 2 (backed by all parties except congress) and the Congress candidate. According to the witness, S. Joginder Singh Man had great influence among refugees of Shekhupura and Gujranwala Districts and 95 per cent. Sikh refugees were supporters of Akali Party and that S. Joginder Singh Man did not contest seriously as he did not get the Akali Ticket and, therefore, he supported him. The witness has given the following figures of votes polled by various parties to show party position in the previous election of 1952:—

In 1952.—N. P. Khosla Independent	2600		
" Communist Candidate	2500		
" Ridha Singh, Akali Candidate	2500	7600	
" S. B. Fateh Singh, Congress Candidate	4500		

These figures show that in 1952 the votes polled by candidates of various parties separately were less than that of congress candidate but collectively the votes polled by all the other candidates were much more than that of congress candidate. In the election of 1954 the independent candidate Shri Khosla was backed and supported by Maha Akali, P.S.P. and Hariana Parja Mandal, Hindu Maha Sabha, Jan Sangh, Harijans parties who did not set up their individual candidates but arrayed themselves against the congress by forming a Sanjha Morcha (Joint Front). Besides the Constituency of Samana was also changed in 1954 and a large number of villages from Nabha and Chanaur mostly inhabitated by Akali minded voters were included in Samana Constituency. About Respondent No. 19 Buta Singh the witness stated that he resided outside the constituency and had no influence and that he never came across Buta Singh in any village holding any meeting or doing any propaganda before the rejection of his nomination paper and that he was not a serious candidate and would have withdrawn if his nomination paper had not been rejected. The statement of respondent No. 2 is that he stood on the ticket of Scheduled

Caste Federation which had alliance with National Front and he was also supported by P.S.P., Akali, Sanjha Morcha, Hindu Maha Sabha and Harijans. He is a retired Military Jamadar and has good relations with people and had the support of Ex. Soldiers. About Buta Singh Respondent No. 19 he said that he had no influence with tenant voters of 40 villages with whom his relations became strained, when he was working in Lal Party in 1952. He contradicted Buta Singh by denying that he had any alliance with Respondent No. 19. He also mentioned that Shri Khosla weilded great influence in Samana Constituency and he and members of his family reside in ten villages and his father had held high positions. These facts are further borne out by the testimony of R.Ws. 4,12,18,22. They have all deposed that Shri Khosla is a resident of village Talwandi Malak, his family members own land and reside in 10 villages and his father held high positions in the State and had good relations with the people and that he has considerable influence with the people of the Ilaqa. There is another set of witnesses R.Ws. 5,6,16,7,14,12,13,22,20 belonging to different parties who depose that Shri Khosla had the support of their parties. Gurbachan Singh R.W. 5 who is the Vice President of Kisan Sabha and member of Communist Party stated that membership of Kisan Sabha is open to the members of all parties but there is a majority of Communists and the Communist Party supported Khosla and tenant voters go to the party candidate. He admits that at one time Buta Singh was detained for 3 months in the agitation in favour of Kisans but said that he was not working at all during the last election. It is also in his evidence that Buta Singh was a member of Lal Communist Party which was dissolved in 1952 and Buta Singh was not taken a member of Communist Party. Gurbax Mehta District Secretary of Communist Party R.W. 6 and Harnam Singh Secretary of Communist Party of India (R.W.16) have deposed that the Communist Party withdrew their candidature (Respondent No. 11), and a Sanjha Morcha of Communist, P.S.P., Akali, Forward Bloc was formed and it supported Shri Khosla and Pritam Singh Respondents 1 and 2. Shri Mehta R.W. 6 has also stated that Communist Party have influence in 30 or 40 villages and Buta Singh Respondent No. 19 was not a member of Communist Party and he had no influence and if he had stood the Communists and Sanjha Morcha would not have supported him and that the Chief of Forward Bloc was against his standing for the election. He admitted that Buta Singh was elected President of Kisan Sabha as he was then able to secure the support of members. It is in evidence of Harnam Singh R.W. 16 that Buta Singh Respondent No. 19 applied for being put up as a candidate for Sanjha Morcha but they decided not to set him up as Forward Bloc had no influence and that they decided to support Shri Khosla.

Amar Singh R.W.7, General Secretary of Akali Party and Udham Singh R.W.14, President of Akali Jatha have been put in to prove that Akali Party also lent its support to Shri Khosla and Pritam Singh Respondents No. 1 and 2. Amar Singh R.W.7 has also said that Joginder Singh Man wielded great influence amongst 40,000 refugees from Sheikhupura and Gujranwala, and as he did not get the Akali ticket he did not contest the election and supported Shri Khosla. The witness worked for Shri Khosla under the instructions of Akali Party.

The co-operation and support of Praja Socialist Party was also given to the respondents 1 and 2 as deposed by Mansa Ram (R.W.12) a member of Executive Committee of P. S. P. and Polling Agent of Respondent No. 1. Teja Singh Secretary of P. S. P. (R.W.13) and Om Prakash member of District Executive of P. S. P. (R.W.22). According to the testimony of R.W.13 P. S. P. did not set up any candidate of its own but gave help to Respondents No. 1 and 2, that in 12 villages of this constituency tenants reside and congress has no influence whereas Communists, Akalies and P. S. P. wield considerable influence, that there are 18-20% ofrefugee voters according to the lists studied by the witness. Om Prakash R.W.22 has also stated that Respondent No. 1 had considerable influence because members of his family reside in 10 or 11 villages and his father held high positions. The witness visited 250 villages in the constituency and his knowledge regarding influence of respondent No. 2 in the constituency is based on the information gathered after visiting 250 villages.

Shri Shanti Sarup President of PEPSU Hindu Maha Sabha (R.W.20) stated that PEPSU Hindu Maha Sabha had decided after consulting the President and Secretary of All India Hindu Maha Sabha to support Respondents 1 and 2, that Hindu Maha Sabha commands influence with 30% of Hindu Residents in Samana numbering 13-14 thousands. The witness visited Samana during last election, made speeches supporting Respondents 1, 2 in his capacity as Chairman of Hindu Maha Sabha and Vice Chairman of PEPSU Bahawalpuries Committee.

It is also stated by R.Ws. 9, 12, 14, 18, 19, 21 that respondent No. 2 is a retired military Jamadar and resides in Samana, is a member of Scheduled Caste Federation and had the support of Ex-servicemen and Harijans.

The respondent's witnesses 1, 2, 4, 5, 6, 12, 13, 14, 15, 16, 22 have all stated that Buta Singh does not reside in this constituency, that Forward Bloc has no influence and that he was not taken as a member of the Communist Party and that he did no political work and propaganda in villages in this constituency before his nomination paper was rejected.

Ranjit Singh Election Quanungo R.W.17 was examined to show that Samana Constituency in 1954 was different from that in 1952 as 70 villages of Nabha and 112 of Ghanaur were added in 1954 and it was made a double member constituency. The respondent has tried to show that a congress candidate in 1952 won from this constituency, but in 1954 the congress lost as all the other parties jointly opposed it and supported him as an independent candidate. Besides the constituency was reconstituted in 1954 and several villages were added to it in which the influence of Akali Party prevailed. It has been brought out in the cross-examination of R.Ws. 4, 5, 6, 16 that Buta Singh was President of Kisan Sabha in 1952 but he was no longer member of Kisan Sabha and was expelled, that Kisan Sabha whose members were Communists, Akalies, Congressmen and of other political parties, but Communists were in majority was not a political party and it did not set up any candidate, that Buta Singh was not taken as member of Communist Party on account of his conduct, that tenant voters were 3000 and members of this Kisan Sabha at the time of election were 4500 in the Samana and 6000 in the District. It is also in evidence that Shri Khosla, as stated in the written statement, won by a margin of 1130 votes and Pritam Singh by 93 votes.

After careful consideration of the statement of the petitioner, his witness Buta Singh and the evidence of the respondents' 22 witnesses the following broad facts stand proved conclusively beyond any doubt:—

(1) Buta Singh respondent No. 19 did not own land or reside in this Ilaqa nor Forward Bloc whose candidate he claimed had any significance or influence in PEPSU.

(2) He did not tour the constituency, nor did he hold any meeting before his nomination paper was rejected and he was not a serious candidate.

(3) Shri Khosla belongs to village Talwandi Malak in the constituency where he owns land and his family members also own land in 10 villages . He, his father and brother held high positions and had contact and good relations with most of the people of the constituency. He toured the constituency, did political work and enlisted the support of the people.

(4) Buta Singh could not get the support of any party while Shri Khosla's candidature was supported by Communists, P.S.P., Akali Party, Hindu Mahasabha, Harijans and Sanjha Morcha consisting of Communists, P.S.P., Akali Party (Raman Group), Forward Bloc, Hindu Mahasabha, Harijan and Sanjha Morcha consisting of Scheduled Caste Federation and Ex-servicemen.

(5) Samana Constituency is mostly rural consisting of 310 villages with one town Samana. It is mostly inhabited by tenants, refugees, Akalies and Harijans. In 1952 it was a single member constituency, but in 1954, 70 villages of Nabha and 112 of Ghanaur were added and it was made a double member constituency. In 1952 a congress candidate won but in 1954 the congress lost as all other parties jointly opposed it.

(6) Shri Khosla had considerable influence in the Ilaqa whereas Buta Singh had very little influence. The Communists, P.S.P., Akali Party wielded great influence and among refugees S. Joginder Singh Man who commanded influence with refugees lent his full support to Shri Khosla.

All these factors indicate that Buta Singh even if his nomination paper had not been rejected and he had fought the election he could not have brought about the defeat of respondents No. 1 and 2. A few votes which he would have got might have come from the congress side or independent's side or from the side of any other candidate. It is difficult to say that he would have got such an appreciable number of votes as to bring down the margin of 1130 votes and defeat the respondent No. 1. He had absolutely no chance of success in face of the opposition of several parties who had joined to oppose the congress party candidate. The real contest was between the congress candidate and Shri Khosla,

an independent candidate backed and supported by Sanjha Morcha, consisting of Communists, P.S.P., Akali Party, Forward Bloc, Hariana Parja Mandal and Hindu Mahasabha, Akans, Refugees, and Harijans. There is no comparison between the status of Buta Singh and Shri Khosla who commanded great influence and obtained the support and help of all parties except congress. It is inconceivable that Buta Singh could have succeeded in face of the strong opposition formed by various parties having great influence with different classes of people. When the mighty congress organisation with all its resources lost the seat in this constituency, Buta Singh would have been also routed if he had contested the election. There was absolutely no chance of his success and in all probability he would not have contested the election. In these circumstances the result of election cannot be said to have been materially affected, by the improper rejection of Buta Singh's nomination paper. In the present case there is very clear, strong and conclusive evidence of respectable persons belonging to various parties, to show that result of election would not have been different even if nomination paper of Buta Singh had not been rejected and he had come in the field. The personal influence of Shri Khosla, his status and contact with people coupled with the full support of the opposition parties which also contributed to his success, would not have allowed Buta Singh to snatch any appreciable number of votes, to defeat Shri Khosla.

It is further clear from the evidence that elections of 1952 and 1954 were fought on party basis and a candidate must have a ticket or support of a party of some standing to affect the result of election or an individual contesting the election must be a person of some status or eminence with good credentials and so influential that he is able to influence the electorate. Samana is a double member constituency and a candidate for general seat must have also alignment with the scheduled caste candidate to have any chance of success.

It is proved that Buta Singh was not set up by any party nor had he the support of anybody. He was once President of Kisan Sabha but was turned out and was no longer member of it before the last election. Kisan Sabha was not a political party and it did not set up any candidate. The members of Kisan Sabha belonged to different parties but Communists were dominating it. It is also in evidence that Buta Singh was not taken as a member of Communist Party of India. Buta Singh if he had stood as independent candidate was not a person of such status and eminence as to influence the electorate to any great extent. He had no alignment with any scheduled caste candidate and without the support or help of any party he would not have got any appreciable number of votes so as to affect the position of returned candidates, respondents 1 and 2. It is difficult to say that Buta Singh would have got all the 1130 votes by which respondent No. 1 has won. It is equally possible that he could have relieved the other candidates of some votes and there is no reliable data on which one can say that if the nomination paper of Buta Singh had not been rejected he would have got so many votes as to bring about the defeat of the returned candidates. Before the election can be declared void under Section 100(1)(c) it is the petitioner on whom the onus lies, who has to satisfy the Tribunal by positive evidence that result of election has been materially affected by the improper rejection of nomination paper of Buta Singh respondent No. 19. The result should be judged by proof fact that the votes which Buta Singh would have got if his nomination paper had not been rejected would have affected the distribution of votes between the contesting candidates in such a manner as to bring about the defeat of returned candidates respondents No. 1 and 2. There is no oral evidence on behalf of the petitioner except the statement of Buta Singh on whose testimony much reliance cannot be placed. Even whatever evidence there is on record it does not give him good credentials. On his own admission, Buta Singh stood on Forward Bloc ticket a component part of Sanjha Morcha which supported Shri Khosla. It has also been shown that Kisan Sabha did not set up any candidate and Buta Singh was expelled from it and was not taken as member of Communist Party.

The above facts which have been proved beyond doubt would also rebut any presumption which in my opinion does not arise in favour of the petitioner. These facts further go to show that respondent No. 1 had much more social and public influence than Buta Singh who was more or less a non-entity in Samana Constituency and this seems to be the reason why the respondent No. 1 secured 13853 votes and even defeated the congress candidate. In these circumstances I do not find it difficult to believe the evidence of respondent No. 1's respectable witnesses that Buta Singh could not possibly have any chance of success at the election as against respondents 1 and 2 or he could have brought about the defeat of respondents 1 and 2.

I have held above that under the statute the petitioner has to discharge the burden of showing that the result of election has been materially affected. He has not discharged the burden nor has he been able to claim the benefit of any presumption in that connection. The respondent produced 22 witnesses to show that the result of election has not been materially affected.

I would, therefore, hold that not only the petitioner has miserably failed to establish that the result of election has been materially affected by reason of the improper rejection of nomination paper of Buta Singh Respondent No. 19, but the respondents No. 1 and 2 have succeeded in showing by strong and convincing evidence that presumption of material affect in favour of petitioner if any arises has been sufficiently rebutted and that the result of election has not been materially affected.

I am not satisfied from the evidence placed on record on behalf of the petitioner that the result of election had been materially affected by the improper rejection of nomination paper of Buta Singh. The issue No. 4 is accordingly decided against the petitioner.

Issue No. 5.—The petitioner is brother of Raghbir Singh Bedi who is alleged to be a trusted man of Col. Gurdial Singh Dhilon, Respondent No. 7. Col. Gurdial Singh contested the election on the congress ticket and lost it. There is no sufficient and direct evidence to prove that Col. Gurdial Singh has set up the petitioner and has financed him but there are some indications from which it appears that he has prompted the petitioner to file this petition. The petitioner is an ordinary elector from a village without much resources and from his own statement it appears that he does not know much about the present election disputes. But any person enrolled as an elector can file the petition. The petitioner deposited the security, signed and verified the petition and filed it. There is no satisfactory evidence on record to show that the petition is not *bona fide*. I find this issue against the respondents.

Issues No. 6(a) and (b) have already been decided by order of the Tribunal, dated 16th February, 1955.

Issue No. 7.—In view of my finding on issue No. 4, that the petitioner has failed to prove that the result of election has been materially affected, the election of Respondents 1 and 2 cannot be set aside. The petition, accordingly, fails and deserves to be dismissed.

In awarding costs, it has to be taken into account that none of the respondents No. 1 and 2 is responsible for the rejection of the nomination paper of Buta Singh and that the whole trouble was brought about by the omission of clause (ii) of para I from the instructions conveyed to the Returning Officers. But the petitioner had a reasonable ground to seek a decision from the Tribunal. The petitioner nor the respondents can be, therefore, saddled with costs. Having regard to the circumstances of the case, I would leave the parties to bear their own costs.

Announced to parties and counsel.

Sd./- Dalip Singh,
Member.
Election Trobunal,
Patiala.

The 26th August, 1955.

BEFORE THE ELECTION TRIBUNAL, PATIALA

ELECTION PETITION NO. 12 OF 1954

S. Dalip Singh *versus* Shri S. N. Khosla, & others.

FINAL ORDER BY THE TRIBUNAL

The petition is hereby accepted in accordance with the majority judgment and the election of Respondents No. 1 and 2 set aside (S. Dalip Singh Member, dissenting). Parties left to bear their own costs.

Sd./- Krishna Sahai, *Member.*
Sd./- Dalip Singh, *Member.*
Sd./- Nawal Kishore, *Chairman.*

Dated 26th August 1955.

ANNEXURE I

ELECTION PETITION NO. 12 OF 1954

S. Dalip Singh. *versus* Shri S. N. Khosla and others.

PRESENT:—

None for the petitioner; &

Shri S. N. Khosla with S. Amar Singh Ambalvi, Advocate.

S. Buta Singh with Shri D. K. Puri, Advocate.

ORDER

This order will dispose of issue 6(a) and (b). A few facts may be stated in order to show how this issue came to be framed. It was alleged in paragraph 4 of the Election Petition that the Returning Officer rejected the nomination paper of respondent No. 19 S. Buta Singh on the ground that the thumb impressions of the proposer and the seconder had not been attested by a Magistrate, specified for the purpose by the Election Commission, and in para 7(a) that the Returning Officer had erred in law in rejecting the nomination paper on this ground. Respondent No. 19 did not file any election petition himself and in the written statement filed by him, he supported the petition throughout but in paragraph 10 raised an additional plea to the effect that respondent No. 1 was disqualified for being chosen as a member of the State Assembly because as a Managing Director of the New Age Press he has share and interest in the contract for the supply of goods to the Government of PEPSU. Accordingly Issue No. 6(a) was framed in respect of this plea. An objection was however taken on behalf of respondent No. 1 that respondent No. 19 was not competent to raise the above plea at the stage of the filing of the written statement. Accordingly issue No. 6(b) was also framed. After the petitioner's learned counsel had made a statement on 24th of January, 1955 closing his evidence, the learned counsel for respondent No. 19 stated that it was now his turn to produce evidence in respect of issue No. 6(a), the burden of proving which had been placed upon him. It was urged on behalf of respondent No. 1 that before he was allowed to lead his evidence, the legal point involved in issue No. 6(b) may be decided first.

The point involved in issue 6(b) appears to us to be simple but lengthy arguments have been addressed on behalf of both respondent No. 1 and respondent No. 19. The learned counsel for respondent No. 1 has taken his stand on the plain language of Section 80 of Act 43 of 1951, according to which no election shall be called in question except by an election petition presented in accordance with the provisions of Part VI. He has also referred to Sections 81 and 83 which only provide how the petition is to be drawn up. Accordingly, it has been urged that it was not open to respondent No. 19 to attack the validity of the election, on a ground which had not been taken in the petition and further that the decision of the petition must be confined to the allegations in the petition and the Tribunal should not investigate additional grounds raised by him. It is also contended that by raising fresh grounds after the expiry of limitation provided for filing an election petition, he was attempting to circumvent the Election Law. The learned counsel contended in terms of 3, E.L.R. 179(181) that if respondent No. 19 was anxious to have the election set aside on the ground raised by him, he should have either filed an election petition himself within the period of limitation, or should have required the petitioner to include a statement of facts challenging the election of respondent No. 1 on the additional ground taken by him in his written statement. It was lastly urged after citing 7, E.L.R. 165(170) for support that the respondent had not deposited security and that there will be nothing to compensate the returned candidate, if he succeeded in refuting a frivolous charge. The learned counsel has also cited 1, E.L.R. 432(441), 3, E.L.R. 102(108), and 5 E.L.R. 93(94) in support of the above contentions. The learned counsel for respondent No. 19 frankly concedes that these authorities are good law and has said nothing against them. He based his entire case upon one single authority reported as A.I.R. 1954 Ajmer, 33 and placed before us a bald proposition that it is open to any of the respondents to raise a ground of constitutional disqualification of the returned candidate even though it has not been taken by the petitioner. It is contended that this can be done even after the expiry of the period of limitation and without making any security deposit. The learned counsel has not supported his contention by any cogent argument or authority and we have no hesitation in rejecting it.. He has further contended that the Tribunal is not bound under the Law to confine its decision to the contents of the petition and that it is competent to address itself to a decision of the fresh grounds raised by the respondent, even though, not taken in the

petition. A.I.R. 1954 Ajmer, 33, cited in support does not refer to any of the authorities relied upon by the learned counsel for respondent No. 1. In this case one of the respondents had raised a plea which had not been taken by the petitioner in the election petition. The Election Tribunal decided the case against the petitioner on this plea in spite of objections raised by him. He accordingly filed an application in the Court of Judicial Commissioner Ajmer for issue of a writ of a *certiorari* against the Election Tribunal and others. The learned Judicial Commissioner held that the Election Tribunal had jurisdiction to entertain the plea raised by the respondent, but did not decide whether the order of Election Tribunal was wrong and ultimately refused to issue the writ prayed for on the ground that the Election Tribunal had become *functus officio*. The observations, in this judgment in the circumstances appear to us to be in the nature of *obiter decta*. The authorities cited on behalf of respondent No. 1 amply support the stand taken by the learned counsel. Besides the plain language of Section 80 of the Act seems to us to clinch the matter, as according to it no election can be called in question except by an election petition presented in accordance with the provisions of Part VI. Sections 81 and 83 deal with the contents of the petition and its frame up. Further we also respectfully agree with the observations in 3, E.L.R. 179 and 7, E.L.R. 150 and other authorities that the respondent should not be allowed to circumvent the Election Law by raising pleas after the expiry of limitation and without depositing security which he could only do if he had filed an Election Petition. Issue 6(b) is disposed of accordingly and we hereby hold that respondent No. 19 is not entitled to lead his evidence in respect of issue No. 6(a).

Dated 16th February, 1955.

Sd/—Krishna Sahai,	Sd/—Dalip Singh,	Sd/—Nawal Kishore,
Member.	*Member.*	*Chairman.*

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